1868 4th Regular.pdf

GENERAL LAWS,

AND

MEMORIALS AND RESOLUTIONS

OF THE

TERRITORY OF MONTANA,

PASSED AT THE FOURTH SESSION

OF THE

LEGISLATIVE ASSEMBLY,

BEGUN AT VIRGINIA CITY NOV. 4 AND CONCLUDED DEC. 13, 1867; ALSO, AT THE EXTRAORDINARY SESSION, BEGUN DEC. 14 AND CONCLUDED DEC. 24, 1867,

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES

AND THE ACTS ORGANIZING THE TERRITORY

PUBLISHED BY AUTHORITY.

VIRGINIA CITY, MONTANA TERRITORY
D. W. TILTON & CO., PUBLIC PRINTERS
1868.

HeinOnline -- 1867 [i] 1867

1868 4th Regular.pdf

AUTHENTICATION.

MONTANA TERRITORY,
SECRETARY'S OFFICE,
Virginia City.

I hereby certify that the laws contained in this volume are true and correct copies of the original enrolled bills, passed by the Legislative Assembly, at the fourth session thereof, begun and held at Virginia City, November 4th, 1867, and at the extraordinary session begun and held December 14th, 1867.

Witness my hand and the seal of the Territory hereunto affixed this seventh day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

JAMES TUFTS,
Secretary of Montana Territory.

1868 4th Regular.pdf

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies.

1868 4th Regular.pdf

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro-tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for the purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be in the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each house shall be the judge of elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

HeinOnline -- 1867 2 1867

1868 4th Regular.pdf

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power

To lay and collect taxes, duties imposts and excises, to pay the

1868 4th Regular.pdf

debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasion;

To provide for organizing, arming and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended,

1868 4th Regular.pdf

unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument; office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

East state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list

*Annulled. See 12th Amendment.

HeinOnline -- 1867 5 1867

1868 4th Regular.pdf

of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear, (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each

HeinOnline -- 1867 6 1867

of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress such information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states:—[*between a state and citizens of another state;—] between citizens of different states;—between citizens of the same state claiming lands under grants of

*Annulled. See 11th Amendment.

1868 4th Regular.pdf

different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall

HeinOnline -- 1867 8 1867

1868 4th Regular.pdf

be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

HeinOnline -- 1867 9 1867

1868 4th Regular.pdf

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the

1868 4th Regular.pdf

militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

HeinOnline -- 1867 11 1867

1868 4th Regular.pdf

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted far as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other unconstitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

HeinOnline -- 1867 12 1867

1868 4th Regular.pdf

ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

(PUBLIC, No. 76.)

AN ACT to provide a temporary government for the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

May 28th, 1864.

That all that part of the Territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington, with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the rocky mountains; thence following the crest of the rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Montana: Provided, That nothing in this Act contained shall be construed to inhibit the government of the United States from

March 2d, 1867

Defining boundaries of territory.

Not to inhibit U. S. Government

1868 4th Regular.pdf

from changing boundaries.

dividing said Territory or changing its boundaries in such manner and at such time as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: Provided further, That nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Montana, until said tribe shall signify their assent to the President of the United States to be included within said Territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

Not to interfere with Indian titles.

Executive power to be vested in the Governor.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Montana, shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory and shall be commander in chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offences against the laws of said Territory and reprieve for offences against the laws of the United States until the decision of the President of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said Territory, and shall take care that the laws be faithfully executed.

Duties of the Secretary of territory.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein and hold his office for four years unless sooner removed by the President of the United States; he shall record and preserve all laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation or absence of the Governor from the Territory the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of the said Territory shall be vested in the Governor

HeinOnline -- 1867 14 1867

and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one year. The number of Representatives may be increased by the Legislative Assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the Council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district, or county, or counties for which they may be elected respectively. Previous to the first election the Governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as the Governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said Council districts, respectively, for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives in each of said Representative districts, respectively, shall be declared by the Governor to be duly elected members of said House: Provided, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election. And the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the Legislative Assembly: Provided, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Legislative authority in governor and legislative assembly.

Formation of legislature, and qualification of members.

SEC. 5 *And be it further enacted*, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth sec-

tion of the act of Congress providing for a temporary government for the Territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly.

Legislative power, over what subject exercised and how.

SEC 6. *And be it further enacted*, That the Legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it becomes a law, be presented to the Governor of the Territory. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, to be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Assembly, by adjournment, prevent its return; in which case it shall not be a law: Provided, That whereas slavery is prohibited in said Territory by act of Congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

Officers how elected or appointed.

SEC. 7. *And be it further enacted*, That all township, district and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Montana. The Governor shall nominate and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for, and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly, and shall lay off the necessary districts for the members of the Council and House of Representatives, and all other officers.

Who prohibited from holding office and what offices.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term;

but this restriction shall not be applicable to members of the first Legislative Assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly; or shall hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the Judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three Judicial Districts, and a District Court shall be held in each of said Districts by one of the Justices of the Supreme Court at such times and places as may be prescribed by law; and the said Judges shall, after their appointments, respectively, reside in the districts which shall be asigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of Probate Courts and of Justices of the Peace shall be limited by law: Provided, That Justices of the Peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the Judge thereof, shall appoint its Clerk, who shall also be the Register in Chancery, and shall keep his office at the place where the Court may be held. Writs of error, bills of exceptions and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law. The Supreme Court or the Justices thereof, shall appoint its own Clerk; and every Clerk shall hold his office at the pleasure of the Court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the said Supreme Court created by this act, or of any Judge thereof, or of the District courts created by this act, or of any Judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said District Courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the District and Circuit Courts of the United States; and the first six days of every term of said Courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and

Judicial power.

How exercised

1868 4th Regular.pdf

writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory the same as in other cases. The said Clerks shall receive, in all such cases, the same fees which the Clerks of the District Courts of Washington Territory now receive for similar services.

U. S. Attorney, U. S. Marshal, their salaries and fees.

SEC. 10. *And be it further enacted*, That there shall be appointed an Attorney for said Territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Washington. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall execute all processes issuing from the said Courts when exercising their jurisdiction as Circuit and District Courts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the Marshal of the District Court of the United States for the present Territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the President of the United States, by and with the advice and consent of the Senate, a Surveyor General of said Territory, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the Surveyor General of New Mexico, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem it advisable to give.

Surveyor Gen'l.

Officers—by whom appointed.

SEC. 11. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The Governor and Secretary to be appointed as aforesaid, shall, before they act as such, respectively, take an oath or affirmation before the District Judge, or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the Executive proceedings; and the Chief Justice and Associate Justices, and all civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, which said oath or affirmation shall be certified and trans-

HeinOnline -- 1867 18 1867

1868 4th Regular.pdf

mitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmations shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed Chief Justice or Associate Justice of the Territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said Territory, may take said oath or affirmation before the Chief Justice or some Associate Justice of the Supreme Court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the Chief Justice and Associate Justice shall receive an annual salary of two thousand five hundred dollars; the Secretary shall receive an annual salary of two thousand dollars The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the Treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive four dollars each, per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually traveled routes; and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a Chief Clerk, one Assistant Clerk, one Engrossing and one Enrolling Clerk, a Sergeant-at-Arms and Doorkeeper may be chosen for each House; and the Chief Clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the Legislative Assembly; but no other officers shall be paid by the United States: Provided, That there shall be but one session of the Legislative Assembly annually, unless on an extraordinary occasion, the Governor shall think proper to call the Legislative Assembly together. There shall be appropriated annually the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of the Clerk of the Executive Department. And there shall also be appropriated annually a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses. And the Governor and Secretary of the Territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semi-annually account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditures shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Oath of office

Salaries of Officers.

Pay of Legislature.

Annual session.

SEC. 12. *And be it further enacted*, That the Legislative Assembly of the Territory of Montana shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as

Seat of government.

HeinOnline -- 1867 19 1867

1868 4th Regular.pdf

they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible: Provided, That the seat of government fixed by the Governor and Legislative Assembly shall not be at any time changed except by an act of the said Assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

Delegate to Congress.

SEC. 13. *And be it further enacted*, That a Delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly who shall be entitled to the same rights and privileges as are exercised and enjoyed by the Delegates from the several other Territories of the United States to the said House of Representativs; but the Delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections the time, and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Montana Territory as elsewhere within the United States.

Fund for School purposes.

SEC. 14. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

Judicial Districts.

SEC. 15. *And be it further enacted*, That, until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said Judicial Districts, by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter or modify such Judicial Districts, and assign the Judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Officers to give security.

SEC. 16. *And be it further enacted*, That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the Territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for monies that may be entrusted with them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

HeinOnline -- 1867 20 1867

SEC. 17. *And be it further enacted*, That all treaties, laws and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of said agencies or superintendents. Treaties with Indians.

SEC 18. *And be it further enacted*, That, until Congress shall otherwise direct, all that part of the Territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty-first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the Territory of Dakota. Country incorporated with Dakota.

Approved, May 26, 1864.

DEPARTMENT OF STATE,
WASHINGTON, May 28, 1864.

A true copy:

W. HUNTER,
CHIEF CLERK.

(PUBLIC—NO. 65.)

AN ACT amendatory of "An act to provide a temporary government for the Territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the legislative assemblies of the several Territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing and other industrial pursuits. Territories not to grant private charters.

1868 4th Regular.pdf

Jurisdiction of Probate Courts.

SEC. 2. *And be it further enacted*, That the Probate Courts of the Territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury: *Provided*, That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute or chancery, or divorce causes. *And provided further*, That in all cases an appeal may be taken from any order, judgment or decree of said probate court to the district court.

SEC. 3. *And be it further enacted*, That the Chief Justice and Associate Justices of said Territory and the Territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

Supreme Court to define Judicial Districts.

SEC. 4. *And be it further enacted*, That the Judges of the Supreme Court of said Territory, or a majority of them, shall, when assembled at the seat of government of said Territory, define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or subdivisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

To revive legislative functions.

SEC. 5. *And be it further enacted*, That for the purpose of reviving the legislative functions of the Territory of Montana, which have been adjudged therein to have lapsed, the governor of said Territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said Territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said Territory, and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said Territory at the session thereof, begun and holden at the city of Bannack, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly, so elected, shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the several legislative districts as shall appear from the election returns in the office of the secretary of said Territory, and from such other sources of information as will enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the Territory as fixed by the governor.

Color of elector not to disqualify.

HeinOnline -- 1867 22 1867

1868 4th Regular.pdf

SEC 6. *And be it further enacted*, That all acts passed at the two sessions of the so-called legislative assembly of the Territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall by special act, in each case, re-enact: *Provided, however*, That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said Territory: *And provided further*, That no legislation or pretended legislation in said Territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

Legislative acts declared void.

SEC. 7. *And be it further enacted*, That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized Territories (except Montana and Idaho) shall be two thousand five hundred dollars.

SEC. 8. *And be it further enacted*, That all acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 2, 1867.

HeinOnline -- 1867 23 1867

1868 4th Regular.pdf

HeinOnline -- 1867 24 1867

1868 4th Regular.pdf

STATUTES

OF THE

TERRITORY OF MONTANA.

TITLE I.

AN ACT to provide for the formation of Corporations for certain purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 13, 1867.

Parties to sign and acknowledge a certificate in writing, setting forth terms of corporation.

SEC. 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; construct wagon roads, telegraph lines, dig ditches, build flumes, run tunnels, or carry on any branch of business, designed to aid in industrial or productive interest of the country, may make, sign and acknowledge, before some officer competent to take the acknowledgement of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof, in the office of the Secretary of the Territory, a certificate in writing, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed, the amount of the capital stock of the said company, the term of its existence, not to exceed twenty years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first three months, and the name of the city, town or locality, and the county in which the operations of said company shall be carried on.

Copy certified by Secretary of Territory to be evidence.

SEC. 2. When the certificate shall have been filed as aforesaid, the Secretary of the Territory shall record and carefully preserve the same in his office, and a copy thereof duly certified by the Secretary of the Territory, under the seal of the Territory of Montana,

shall be evidence of the existence of such company, and the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession and shall be capable of suing and being sued in any court of law or equity in this Territory, and they and their successors may have a common seal, and may make and alter the same at pleasure, and they shall, by their corporate name, be capable in law, or acquiring by purchase, pre-emption, donation or otherwise, and holding or conveying by deed or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

To have common seal.

More than one place of business.

SEC. 3. Any certificate hereafter filed and recorded under the provisions of this act, may designate one or more places, where the company may carry on their business in the Territory of Montana.

Certificate to state principal place of business.

SEC. 4. If any company shall be formed under this act, for the purpose of carrying on any part of its business in any place outside of this Territory, the [said] certificate shall so state, and shall also state the name of the city, town or locality and county in which the principal part of the business of said company, within this Territory is to be transacted and said town and county shall be deemed the town, place and county in which the operations and business of the campany are to be carried on, and its principal place of business, within the meaning and provisions of this act.

Publication of notice of election not less than ten days.

SEC. 5. The stock, property and concern of such company shall be managed by not less [than] three, nor more than nine trustees, who shall respectively be stockholders in said company, who shall, (except the first three months) be annually elected by the stockholders at such time and place as shall be directed by the by-laws of said company, and public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided, one half of the stock is represented; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year, in such manner as shall be prescribed by the laws of said company.

SEC. 6. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company for that [reason] shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

HeinOnline -- 1867 26 1867

President to give security.

SEC. 7. There shall be a President of the company who shall be designated from the number of trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company by its by-laws may require.

Trustees to demand subscription, not to exceed twenty per cent.

SEC. 8. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon. If payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

SEC. 9. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of the United States and of this Territory, and prescribing the duties of officers, artificers and servants, that may be employed; for the appointment of all officers, and for carrying on of all kinds of business within the objects and purposes of such company.

Stock to be deemed personal property.

SEC. 10. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company, but no transfer shall be valid, except as between the parties thereto, until the same shall have been so entered upon the books of the company as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

SEC. 11. The copy of any certificate of incorporation, filed and recorded in pursuance of this act, certified by the Secretary of the Territory, under the great seal of the Territory of Montana, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

Stockholders to be individually liable to amount of unpaid stock.

SEC. 12. All the stockholders of every company incorporated under the provisions of this act shall be severally [and] individually liable to the creditors of the company in which they are stockholders to the amount of unpaid stock held by them respectively, for all acts of and contracts made by such company, until the whole amount of capital stock fixed and limited shall all be paid in, and a certificate thereof shall have been made and recorded as prescribed in the following sections, and the capital stock so fixed and limited shall all be paid in, one-half thereof within one year, and the other half thereof within two years from the incorporation, or said corporation shall be dissolved.

Trustees to make purchases and issue stock in payment.

SEC. 13. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment thereof,

 1868 4th Regular.pdf

and the stock so issued shall be declared and taken to be full stock and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of the tenth section of this act; but in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

SEC. 14. The President and a majority of trustees within thirty days after the payment of the first instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the President and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

Report to be annually published.

SEC. 15. Every such company shall, annually, within twenty days from the first day of September, make report which shall be published in some newspaper published in the town, city or village; or, if there be no newspaper published in said town, city or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of existing debts, which report shall be signed by the President and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on; and if any of said company [shall] fail to do so, all the trustees of the company shall be jointly and severally liable for all debts of the company then existing, and for all that shall be contracted before such report shall be made.

Trustees to be liable, if they pay dividends while company is insolvent.

SEC. 16. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office; provided that if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

No loan to be made to stockholders.

SEC. 17. No loan of money shall be made by any such company to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum loaned.

SEC. 18. If any certificate or report made or public notice given by the officers of any such company in pursuance of the provisions of this act, shall be false in any material representation, all the offi-

HeinOnline -- 1867 28 1867

cers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

Parties pledging stock to be liable as stockholders.

SEC. 19. No person holding stock in any such company as executors, administrators, guardian, or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly; and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act and held the same stock in his own name.

SEC. 20. Every such executor, administrator, guardian, or trustee shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may nevertheless represent the same at all such meetings and may vote accordingly as a stockholder.

SEC. 21. The Legislature may at any time alter, amend or repeal this act, but such amendment or repeal shall not take away or impair any rights acquired or remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Corporations may increase or diminish capital stock.

SEC. 22. Any corporation or company heretofore formed, either by special act or under the general law and now existing, or any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section one of this act, subject to the provisions and liabilities of this act; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under any special act, may come under and avail itself of the provisions of this act by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this act.

Publication of meeting to increase or diminish capital stock.

SEC. 23. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privilege of this act, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day fixed for holding

such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this act.

Representation of two-thirds of all the stock necessary to increase or diminish stock.

SEC. 24. If at any time and place specified in the notice provided for in the preceding sections of this act, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if on canvassing the votes it shall appear that a sufficient number of votes have been in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debt and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by the first section of this act, and when so filed and so recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this act, as the case may be.

SEC. 25. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally liable for such excess, to the creditors of such company.

Treasurer is to keep a book with names of all the stockholders.

SEC. 26. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who have been or shall, within the provisions of this act, become stockholders of such company, showing their places of residence, the number of the shares of stock held by them respectively, and the time when they became respectively the owners of such shares and the amount of the stock actually paid in, which book shall, during the usual business hours of the day and on every day except Sunday and the fourth of July, be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business [operation] shall be located, and any and every such stockholder, creditor or representative shall have a right to make extracts from such books; and no transfer of stock shall be valid for any purpose whatever,

except to render the person to whom it shall be transferable liable for the debts of the company according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff to any suit or proceedings against such company or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such books or shall refuse or neglect to make any proper entry in such book, or shall make any improper entry, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people of Montana the sum of fifty dollars for every day it shall so neglect, to be sued and recovered in the name of the people of said Territory, by the district attorney of the conty in which the business of such corporation shall be located, and when so recovered the amount shall be paid into the treasury of such county for the use of common schools therein.

Company to forfeit fifty dollars for refusing the inspection of the books.

SEC. 27. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this act shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also at the same time place and keep on file in his office for six months thereafter, a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this act, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

Persons owning fifteen per cent of capital stock can demand statement of Treasurer.

SEC. 28. When any three or more persons shall associate to form a company for the purpose of constructing a wagon road, under the provisions of this act, their certificate of incorporation in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same as near as may be, and the said company shall have the right of way over the line named in the certificate, to erect toll gates not to exceed one every ten miles of road, and to collect toll thereat at the rates prescribed by the county commissioners, or the tribunal transacting county

1868 4th Regular.pdf

business, which rates shall be written, printed or painted in a legible manner and conspicuously posted at each of such gates. Provided, the route named does not conflict with the rights of any company already acquired. Provided further, that no road, ferry or bridge shall be established under the provisions of this act unless the county commissioners of the county where the same is proposed to be erected shall deem it of public interest that the same shall be established and shall consent to the same; and provided also, that the county commissioners of any county where any toll road, bridge or ferry shall be established under the provisions of this act, shall have full power to increase or decrease the rates of toll at any time they may see proper.

Company not to demand toll when road is out of repair.

SEC. 29. No company formed under this act shall demand and receive toll whenever said wagon road is not in reasonable good repair, and any person having paid toll on said road and shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or an agent of said company, to appear before him to answer in the said complaint within not over five days from the date of said complaint, and if it be found that said road is in bad condition or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and said justice shall issue his order that no toll be collected upon said road or any part thereof until it is put in good repair.

Persons refusing to pay toll subject to a fine.

SEC. 30. Any person, after toll shall have been demanded by the regularly authorized toll collector, who may be found traveling upon said road and refusing to pay said toll shall be subject to a fine of not less than five dollars nor more than ten dollars for such offense, the same to be collected before any justice of the peace in the county wherein such road is located.

SEC. 31. Whenever any three or more persons associate under the provisions of this act to form a company for the purpose of constructing a ditch, for the purpose of conveying water to any mines, mills or lands, to be used for mining, milling, or the irrigation of lands, they shall in their certificate, in addition to the matters required in section one of this act, specify as follows: The stream or streams from which the water is taken; the point or place on said stream, at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

Ditch companies not direct streams from original channel.

SEC. 32. Any ditch company formed under the provisions of this act, shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate, through their ditch. Provided, that the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this act and by vir-

HeinOnline -- 1867 32 1867

1868 4th Regular.pdf

tue of said certificate; nor shall the water of any stream be diverted from its original channel to the detriment of any mines, mill men or others along the line of said stream, who may have a priority of right.

SEC. 33. Any company constructing a ditch, under the provisions of his act, shall furnish water in the way and manner named in the certificate, in the way and manner the water is designated to be used, whether miners, mill men, or farmers, whenever they shall have water in their ditch unsold; and shall at all times give the preference to the use of the water in said ditch to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish such water.

Ditch company to keep banks of ditch in good order.

SEC. 34. Every ditch company organized under the provisions of this act, shall be required to keep the banks of their ditch in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, that the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch, so far as necessary to protect such claim or property from the water of said ditch.

Flume company to specify termini and route.

SEC. 35. That when any company shall organize under the provisions of this act to form a company for the purpose of constructing a flume, their certificate in addition to the matter required in the first section of this act, shall specify as follows: The place of beginning, termini, and route so near as may be, and the purpose for which such flume is intended; and when organized according to the provisions of this act, said company shall have the right of way over the line proposed in such certificate for such flume; provided it does not conflict with the right of any former fluming, ditching or other company.

SEC. 36. When any three or more persons shall associate under the provisions of this act to form a company for the purpose of constructing a bridge or establishing a ferry over any streams of water in this Territory, their certificate, in addition to the matters required in the first section of this act, shall specify as follows: The place where said bridge or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream, where the said bridge or ferry is to be built or established, are owned by said company, or that they have obtained in writing the consent of the owners of the banks where the said bridge is to be built, to erect said bridge or establish said ferry as aforesaid; or that the banks at such place are a public highway; and shall have the exclusive right of way, three miles up and down said stream from said bridge or ferry.

Bridges and ferries to be kept in good and safe condition.

SEC. 37. Any bridge built or ferry established under the provisions of this act, shall at all times be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or high water; and any and every bridge so built or established, shall, if destroyed by flood, fire, or other causes,

HeinOnline -- 1867 33 1867

1868 4th Regular.pdf

be rebuilt or established within a period of nine months from such destruction, or the rights acquired under this act shall be forfeited and cease to exist.

Company to keep rate of toll posted.

SEC. 38. That the company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on said bridge or ferry, a board on which shall be written, painted or printed, in a plain, legible manner, the rates of toll, which rates of toll shall have been prescribed by the county commissioners, or the tribunal transacting county business in said county; and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars; and no company formed under the provisions of this act shall demand or receive toll whenever said bridge or ferry is not in a good and safe condition for travel; and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as provided in section twenty-nine of this act.

SEC. 39. That nothing in this act shall be so construed as to give the right of way to any wagon road, bridge or ferry company, until such right of way shall have been obtained by complying with the provisions of this act, and that said companies shall not be established upon public ferries, bridges or highways.

SEC. 40. Whenever any three or more persons shall associate under the provisions of this act for the purpose of running a tunnel for mining for gold, quartz, or other ore, their certificate of incorporation shall specify, in addition to the matters required by the first section of this act, as follows, to-wit: Where said tunnel is to be run, the place of commencement, course and termination, and the minerals or ore designed to be excavated.

SEC. 41. Any company formed under the provisions of this act, for the purpose of excavating a tunnel, shall have and hold eleven hundred feet on each side of said tunnel, on all lodes discovered by them while excavating said tunnel, and through all lodes discovered previous to the commencement of said tunnel, they shall have the right of way.

Telegraphic companies to certify termini of line.

SEC. 42. Whenever any three or more persons associate under the provisions of this act, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this Territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of any necessary fixtures, including posts, piers and abutments, necessary for the wires. Provided, That the same shall not incommode the public in the use of said roads or highways.

Companies to commence work within sixty days and complete within two years.

SEC. 43. Any company formed under the provisions of this act, for the purpose of constructing any road, ditch, flume, bridge, ferry, or telegraph line, shall within sixty days from the date of their certificate commence work on such road, ditch, flume, bridge, ferry or telegraph

HeinOnline -- 1867 34 1867

1868 4th Regular.pdf

line, as shall be named in the certificate, and shall prosecute the work with due diligence, until the same is completed, and the time of the completion of any such road, bridge, ditch, ferry or telegraph line, shall not be extended beyond a period of two years from the time the work was commenced as aforesaid, and any company failing to commence work within sixty days from the date of certificate, or failing to complete the same within two years from the time of commencement, as aforesaid, shall forfeit all the right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume, constructed under the provisions of this act, shall not be extended beyond a period of two years; and the county commissioners of the counties in which the roads, bridges and ferries are located, may purchase, upon agreement with said companies, said roads, bridges and ferries, declaring them free for the use of the public.

SEC 44. Every corporation formed under the provisions of this act has power:

First, To have succession by its corporate name, for the period limited in its certificate of charter.

Second, To sue and be sued, complain and defend in any court of law or equity.

Third, To make and use a common seal, and alter the same at pleasure.

Fourth, To hold, purchase and convey such real and personal estate as the purposes of the corporation may require.

Fifth, To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

Sixth, To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock. Provided, That no corporation formed under the provisions of this act, shall own or hold possession of more than six hundred and forty acres of land.

SEC. 45. The powers enumerated in the preceding section, shall vest in any corporation that shall be hereafter created, although they may not be specified in the certificate; but no corporation shall possess or exercise any corporate powers, except such as shall be [necessary] to the exercise of the powers so enumerated.

SEC. 46. Any person who shall wilfully or maliciously damage, or interfere with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this act, upon conviction thereof, before any court of competent jurisdiction in the county where the offense shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, or both, at the discretion of the court; said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, and to be paid into the county treasury for the use of common schools; and said offenders shall also pay all damages that any such corporation may sustain, together with costs of suit.

HeinOnline -- 1867 35 1867

1868 4th Regular.pdf

SEC. 47. Nothing in this act shall be so construed as to authorize any company, authorized under the same, to issue notes or bills for circulation as money.

SEC. 48. That any company organized under the provisions of this act, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law, or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the Secretary of the Territory of their surrender of their rights and privileges under any previous law or act, said notice to be certified to by the President of said company, and to be filed in the office of the Secretary of the Territory, and become a body corporate and politic, by complying with all and singular, the provisions of this act.

Petition to probate judge to have land appraised, not owned by company and required by them.

SEC. 49. Whenever any road, ditch, telegraph, or fluming company, organized under the provisions of this act, shall not have acquired by gift or purchase, any land, real estate, or claim, required for the construction or maintenance of any road, ditch, telegraph, or flume, or which may be affected by any operations connected with the construction or maintenance of the same, the said corporation may present to the probate judge of the county wherein such lands, real estate, or claims shall be, a petition signed by the President, attorney, or agent of the same, describing with convenient accuracy and certainty, by maps or otherwise, the lands, real estate, or claims, so required to be taken, or affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, or incumbrancer, as far as known to such President, attorney or agent, or appearing of record upon local or county records, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and person interested for the taking or injuriously affecting such land, real estate or claims as aforesaid. The probate judge shall have satisfactory evidence that notice of an intended application and the time and place thereof for the appointment of appraisers between said corporations and the owners, and the persons interested in such lands, real estate and claims, has been given at least ten days previously, to such owners, personally at their residence or on the premises; or by the publication thereof in a newspaper printed in the county in which such lands, real estate, or claims shall be, or if no newspaper is published in said county, then by posting three or more notices in some public place in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county known to such President, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court may adjourn the proceedings from time to time, shall direct any future notice thereof to be given, that may seem proper; shall have proofs and allegations of all parties interested, touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their offices, shall take

Notice to be published thirty days.

Three appraisers.

HeinOnline -- 1867 36 1867

an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpoenas, and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall have the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate or claims, to be taken or affected, as well as all damages accruing to the owner[s] or parties interested, in consequence of the condemnation of the same, taking, or injuriously affected as aforesaid, making such deduction or allowance for the real benefits or advantages which such owners, or parties interested, may derive from the construction of said road, ditch, telegraph or flume. They, or a majority of them, shall make, subscribe, and file in the office of the clerk of the county in which such lands, real estate or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place, for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands, real estate or claims, in manner aforesaid. Such ascertainment of compensation, with mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of each rule, the said corporation shall become seized in fee, or shall have exclusive right, title and possession, of all such lands, real estate or claims, described in said rules as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of, and hold and use the same, for the purpose of [such] said road, ditch, telegraph, or flume, and shall thereupon be discharged from all claims for any damage by reason of any matter specified in such petition, certificate or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this act, or any purchase by, or donation to, said corporation of lands or claims for purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said corporation; of [or] if said assessment shall fail or be deemed defective, the said corporation shall proceed and perfect such title by procuring an assessment of the compensation proper to be made to any person who has title, claim, or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the probate judge may, by rule in that behalf made,

Majority to certify to assessment of damages.

1868 4th Regular.pdf

authorize the said corporation, if already in possession; and if not in possession, to take possession of and use said premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: Provided, such corporations shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained. And in every case when possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraisers so appointed shall die, be unable, or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner and with the same effect as herein required respecting the probate court.

SEC. 50. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the judge of the district court of the district in which the principal place of business of such corporation is situated, a petition to that effect, accompanied by a certificate of the proper officers, and setting forth that at a general or special meeting of the stockholders, called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk of the court, which notice shall set forth the nature of the application, and shall specify the time when, and the place where it is to be heard; and shall be published in some newspaper of the county where the principal place of business of said company is located, for at least four consecutive weeks before the time of the hearing of such application, or if no newspaper be published in the county, then by advertisement posted up for thirty days, in three of the most public places in the county. At the time and place appointed, or any other to which the judge may postpone it, he shall proceed to hear and consider such application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary votes to dissolve itself, he shall enter an order declaring it dissolved, and the rights of franchise acquired by said corporation shall cease and become null and void after such dissolution.

A vote of two-thirds of all the stockholders to disincorporate.

SEC. 51. Upon the dissolution of any corporation, formed under this act, the trustees at the time of dissolution shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts, settle all its affairs and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

HeinOnline -- 1867 38 1867

SEC. 52. Any corporation desiring at any time to remove its principal place of business into some other county of the Territory, shall file in the office of the County Recorder of such county, a certified copy of its certificate of incorporation, and shall give notice of such removal by publication in some newspaper of the county in which such principal place of business was located, at least once a week for four weeks, and if no newspaper be published in such county, then by advertisement posted up for thirty days, in three of the most public places in said county.

SEC. 53. This act to take effect and be in force from and after its passage and approval.

[Approved, Dec. 13, 1867.]

AN ACT Providing for the collection of Revenue.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 23, 1867

SECTION 1. There shall be levied annually by the Board of County Commissioners of each County in this Territory, and collected by the County Treasurer of such Counties an *ad valorem* tax on each dollar of assessed valuation of all property in this Territory, subject to taxation; for Territorial purposes, on each dollar four mills; for County purposes, on each dollar, any sum not exceeding ten mills; and for school purposes, not less than one, nor more than three mills; and for the benefit of the poor, not more than one mill; and such levy when made, shall be entered on the books of said County Commissioners. County Commissioners to levy, and county treasurers to collect annually an ad valorem tax.

SEC. 2. Every tax levied under the provisions of this act is hereby made a lien against the property assessed, and such lien shall attach at the time of such assessment, and shall not be satisfied or renewed until such taxes are paid. Taxes to be a lien from time of assessment.

SEC. 3. All property of every kind and nature in this Territory, on the first day of January of each year, or which shall arrive in this Territory before the first day of December ensuing, shall be subject to taxation, except, Property exempt from taxation.

First, All lands and lots of ground with buildings, improvements and structures thereon, belonging to the Territory or any municipal corporation, or to any county of the Territory, and all lands belonging to the United States, or to this Territory, and all buildings and improvements belonging to the United States or to this territory. Property belonging to the Territory or to the United States

1868 4th Regular.pdf

Second, Court Houses, jails, town halls, houses occupied by fire and military companies and their apparatus and other public structures and offices, and all squares and lots kept open for health, or public use, or for ornament, belonging to any county, city, town or village in this Territory, public libraries, colleges, school houses, and other buildings for the purposes of education, with their furniture, libraries and all other equipments and lots or land thereto appurtenant and used therewith, so long as the same shall be used for that purpose: Provided, That when any of the property mentioned in this sub-division is private property, from which a rent or other valuable consideration is received for its uses, the same shall be taxed as other property.

Libraries, colleges and school houses.

Third, Public asylums, hospitals, poor houses and other charitable or benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments, all ground and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain.

Public Asylums and buildings for charitable purposes.

Agricultural societies.

Fourth, Churches, chapels and equipments, and the lots of ground appurtenant thereto and therewith: Provided, rent is not paid for such ground, so long as the same is used for that purpose only, without yielding rent.

Churches.

Fifth, The buildings and lots of ground appurtenant thereto and used therewith, owned and used by the Order of Free and Accepted Masons, the Independent Order of Odd Fellows, or by any benevolent or charitable society, except such buildings and lots of ground as are owned in connection with individual owners; then only to the extent owned by such orders or societies, unless such property as is rented by said societies for other purposes, which shall be taxed as other property.

Buildings used by Free Masons and Odd Fellows.

Sixth, Cemeteries and grave yards, set apart and used for interring the dead.

Cemeteries and places for burial of the dead.

Seventh, The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family.

Property of widows and orphan children.

Eighth, Growing crops.

Ninth, Mines and mining claims: Provided, That all machinery used in mining claims, and all property and improvements appurtenant to or upon mining claims, which have an independent and separate value, shall be subject to taxation. Tools of mechanics, farming tools of husbandmen, libraries of professional men and private citizens, household furniture of families or householders, which do not exceed in value to each of said callings or occupations the sum of two hundred and fifty dollars.

Mines and mining claims

Mechanic's and farmer's tools.

Private libraries and household furniture.

SEC. 4. All other property, real or personal, within the Territory is subject to taxation in the manner herein directed; and this is intended to embrace improvements on land and lots in towns, including land bought from the United States and from this Territory, whether bought on a credit or otherwise, being franchises which for the purposes of this chapter are to be considered real property, ditches, and flumes, horses, oxen, cows and calves, mules and asses, sheep, swine and goats, money in coin or gold dust, whether

Property taxable.

HeinOnline -- 1867 40 1867

1868 4th Regular.pdf

in posession or on deposit, and including bank bills, property or labor due from solvent debtors on contract or on judgment, whether in this Territory, or not, mortgages and other like securities; stock or shares in any bank or company incorporated or otherwise, and whether incorporated by this or any other Territory or State, or whether situated in this Territory or not; public stock or lands, household furniture, not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry, private libraries, those over two hundred and fifty dollars; pleasure carriages, stages, hacks and other vehicles for transporting passengers; wagons, carts, drays, sleds, and other descriptions of vehicles or carriage; boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this Territory or not, if owned either in whole or in part by persons who are inhabitants of this Territory; annuities, but not including pensions from the United States, or any of the States.

Owners to list their property.

SEC. 5. Every inhabitant of this Territory of full age and sound mind, shall list all property subject to taxation in this Territory of which he is the owner, or has the control or management in the manner hereinafter directed; but the property of a minor is to be listed by his guardian, or if he have no guardian, then by his father, if living; if not, then by his mother, if living; if not, then by the person having the property in charge. If a married woman, by her husband; but if he be unable or refuse, then by herself; of a beneficiary from whom property is held in trust, by the trustee; and if the personal property of a descendant, by the executor; of a body corporate, company, society, or partnership by its principal accounting officer, agent or a partner. Property under mortgage or lease, is to be listed by, and taxed to the mortgagee or lessee, unless it be listed by the mortgagor or lessor, and in all cases said property shall be listed in the name of the owner.

Trustees to list trust property.

Principal officer to list corporate property.

Listed by mortgage.

Commission merchants to be considered owners.

SEC. 6. Commission merchants, and all persons trading and dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this Territory, are, for the purposes of taxation, to be deemed owners of the property in their possession.

Personal property to be listed in county where owner resides.

SEC. 7. All personal property is to be listed, assessed and taxed in the county where the owner resides; but if the owner resides out of the Territory, it is to be listed and taxed where it may then be, and if the agent or person having charge of such property, neglect to list it, he will be subject to the penalty hereinafter provided.

Persons required to list property belonging to others.

SEC. 8. All persons required to list property in behalf of another shall list in the same county in which he would be required, if it were his own, except as herein otherwise directed, but he must list it separately from his own, naming the person or estate to whom or to which it belongs, but the undivided property of a person deceased, belonging to his heirs, with or without naming the several heirs.

To be listed separately from his own

Property of corporations.

SEC. 9. The property of corporations or companies constructing bridges, canals, ditches, flumes, railway, plank roads, grading roads, turnpiking roads, and similar improvements, shall be assessed to each corporation or company; and when any such stockholders are not resi-

HeinOnline -- 1867 41 1867

1868 4th Regular.pdf

Non-residents to have property taxed in this territory.

dents, their interests are to be taxed in this Territory, and in the county in which is either terminus of said road; and to that end the assessor is directed to require the secretary or clerk or whatever officer of corresponding duties there may be, to render under oath, a list of the names and residences of such non-residents, the actual value of such stock or shares; but if such secretary or other corresponding officer does not reside in this Territory, the assessor or assessors may require the same of any officer residing in this Territory; and if such officer refuse, the shares of the non-resident shall be assessed to the company or corporation, and may be ascertained in the best manner within the power of the assessor or assessors, the actual value of the road or structure within their respective counties.

Secretary to furnish assessors with place of residence of non-residents, and value of their stock.

SEC. 10. All taxable property is to be listed and valued each year, and shall be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity and all other elements of its value.

Taxable property to be listed each year.

SEC. 11. Depreciated bank notes, or stock, or shares in corporations or companies, may be listed at their current value. Credits shall be listed at such sum as the person listing them believes he will receive or can collect, and annuities at such sum as the person listing believes them to be worth in money.

Depreciated stock credits and annuities to be listed at value.

SEC. 12. The term credit includes every claim or demand for money, labor or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money in property of any kind, and secured by deed, mortgage or otherwise, [except] but pensions from the United States or any of the States, by whom, when and in what manner property may be listed.

Defining the term credit.

SEC. 13. Any person owning, or having in his possession or control, within this Territory, with authority to sell the same, any personal property purchased either in or out of this Territory, with a view of being sold at an advanced price or profit, or which has been consigned to him from any place out of this Territory for the purpose of being sold within the same, shall be held to be a merchant for the purposes of this chapter, such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession or control during the year next previous to the time of listing; and if he has not been engaged in that business so long, then he shall take the average during such time as he may have been so engaged, and if he be commencing business, he shall take the value of the property at the time of listing.

Defining who shall be deemed merchants.

How value of taxable property to be ascertained.

SEC. 14. Any person who purchases, receives or holds personal property of any kind for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, or by the combination of different materials with the view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this chapter, and he shall list for taxation the average value of such property in his hands, estimated as directed in the preceeding section, but the value shall be estimated upon the materials only entering into the combination of manufacture.

Defining who shall be deemed a manufacturer.

HeinOnline -- 1867 42 1867

Owner of property to furnish list to assessor under oath first day of June.

SEC. 15. The assessor of each county, on or before the first day of June in each year, shall demand of each tax payer in his county, a list, as hereinafter provided, of his, her or their property, and if the said list be not rendered under oath at the time such demand be made, or if such tax payer be absent, the assessor shall leave at the usual place of residence of such tax payer, a printed form of such list, and if such list be not made out and returned to the assessor within ten days from the time of leaving the same, the assessor shall proceed to assess the property of such tax-payer according to his best knowledge and information: Provided, that upon all personal property, when the owner has not sufficient real property which is not exempt from taxation to pay the taxes which would be levied against the personal property of such owner, the assessor shall report his assessment forthwith to the treasurer of the county, and if there be danger that any of such property will be removed from the county, the assessor shall have power, and it shall be his duty to seize a sufficient amount of property to pay the taxes and cost, he shall forthwith report such seizure to the treasurer of the county, who shall hold the property seized until such taxes are paid. It shall be the duty of the county treasurer, immediately on the receipt of the assessment against any personal property mentioned in this section, to levy the tax therein, and if the tax levied be not paid within ten days from the time the assessment was made, he shall proceed to sell the property seized by the assessor, and shall seize and sell other personal property on which taxes have been levied by the provisions of this section, and shall sell the same in the manner provided for the sale of personal property for taxes.

Printed form of list to be left with owner; returned to assessor within ten days.

Assessor to seize sufficient property to cover tax and costs.

Treasurer to sell personal property seized by assessor within ten days of assessment.

Property arriving in territory between January 1st and Dec 31st.

SEC. 16. If any property shall arrive in this Territory between the first day of January and the last day of December in each year ensuing, the same demand and assessment shall be made in the mannes as prescribed in list, except that the said list shall be made out and returned to the assessor at the time the same shall be demanded.

Description of property to be contained in list.

SEC. 17. The list shall contain, first, his, her or their lands, by township, range, section, and any division or part of a section; and when such part is not a government division or subdivision, some other description to identify it, and his town lots, naming the town in which they are situated and their proper description by number and blocks, or otherwise, according to the system of numbering in the town. Second, his personal property employed in merchandise; amount of capital employed in manufactures; number and value of horses; number and value of mules and asses; number and value of oxen; number and value of cows and calves; number and value of sheep; number and value of swine; number and value of goats; number and value of carriages, of every description; amount of money and credits; amount in value of clocks, watches, jewelry, and gold and silver plate; number and value of musical instruments; amount in value of taxable household furniture; amount in stocks or shares in any corporation or company; amount in value of all other property not enumerated.

County Commissioners to furnish

SEC. 18. On or before the first day of March in each year, the county commissioner shall provide the assessor with suitable blank

1868 4th Regular.pdf

assessor with blanks. forms for assessment, and such instructions as to insure full and uniform assessments and returns.

SEC. 19. The list shall be signed and sworn to by the persons making it, and the oath may be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified by him, and the oath may be printed upon the blank forms, and shall be in substance as follows:

Party making list to swear to it.

TERRITORY OF MONTANA, } SS.
COUNTY OF ———, }

I, A. B., do solemnly swear that I have listed in the within list, all goods, monies, credits and all other description of property owned or held by me as principal, partner, or agent, and that the valuation affixed is the full valuation in money, according to the best of my knowledge, so help me God.

Form of oath.

[Signed] A. B.

SEC. 20. On or before the fifteenth day of June annually, the assessor shall make out, and deliver to the county clerk, an assessment roll, containing, in a tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his county, with the several species of property, and the values as hereinbefore indicated, with the column of numbers and values footed, and in a column to be provided for that purpose, he shall write the words, "by the assessor," when the list was made by himself, together with the words, "absent or sick," or the words, "refused to list," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it, and neglect shall be taken as a refusal.

Assessor to furnish county clerk annually with tabular form and return of all parties assessed in county.

SEC. 21. The assessor shall take and subscribe an oath to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

Assessor to take oath.

I, C. D., assessor of——county, [do] solemnly swear that the value of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list, the same is herein truly returned as set forth is such statement, that in every case where I have been required to ascertain the amount or value of the property of any person or body, I have diligently and by the best means in my power, endeavored to ascertain the true amount and value, and that as I verily believe, the full value thereof is set forth in the annexed, and that in no case have I knowingly omitted to demand of any person of whom I was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

Form of oath.

Additional fees allowed assessor. And the said assessor shall be entitled to receive, in addition to the per diem allowed, one and one-half per cent. on all taxes thus collected, as additional fees.

SEC. 22. For the purpose of enabling such assessor, or his deputy, to make assessments as required herein, he shall demand the necessary statements under oath or affirmation, from such person,

HeinOnline -- 1867 44 1867

and from the president, cashier, treasurer, or managing agent of each corporation, association, company or firm, of the total amount received from his or their mine or mines, interest, share or stock in such mine or mines, by the reduction of ores, sale of rock or quartz, or any material of value whatever, or from all other sources of every kind of charter [or character,] together with amount necessarily expended in producing the same during the year next preceding the time of making such statement to the assessor or his deputy. Such assessor or his deputy shall enter the total amount specified in such statement, opposite the name of such person or persons, firm, corporation, association, or company assessed. And the persons herein named shall subscribe to the following oath:

Assessor to demand statement under oath of parties interested in corporations or companies.

TERRITORY OF MONTANA, }
COUNTY OF ———, } SS.

I, A. B., do solemnly swear that I have made all necessary statements required by law in this Territory, in relation to the total amount received and produced by me, from all sources of every kind or character, with the necessary amount expended in producing the same, to the best of my knowledge, so help me God.

Form of oath to statement.

A. B.

And said assessor shall receive the sum of twelve dollars per day for each day's service actually performed in the discharge of his duties under this act. And said county commissioners shall set apart such sum out of any monies received into the treasury, for said object.

Per diem of assessor.

SEC. 23. If any person, officer or agent, shall neglect or refuse any request of such assessor, or his deputy, to make such statement under oath or affirmation, such assessor or his deputy shall make an estimate of the probable gross proceeds of such mine or mines, or such interest, stock, or shares therein, together with the amount necessarily expended in producing the same, for the year next preceding such refusal or neglect, and the value so affixed by such assessor shall not be reduced by the board of equalization: Provided, That the assessment authorized to be made by the provisions of the next preceding section of this act, shall be equalized, duplicated and collected in the same manner and time as other taxes are, under the provisions of this act.

Penalty when party refuses to make sworn statement.

SEC. 24. The net proceeds from all mines or mining claims, or from all stock, shares, or interests therein, of every person, corporation, association, firm or company, shall be assessed and taxed in the county wherein the mine or mining claim is located.

Net proceeds of mining claims to be taxed.

SEC. 25. The clerk of the board of county commissioners shall, immediately after the expiration of the time for hearing appeals, and once during each and every month, make out lists containing the sums payable according to law, upon every subject of taxation, either of real or personal property, or of capitation tax, which list shall be furnished the treasurer within ten days from the time of hearing appeals.

Clerk of board of county commissioners to furnish list to county treasurer within ten days after appeals are made.

SEC. 26. Each treasurer, in receiving from the clerk, or in case of

County treasurer to furnish receipts to territorial auditor, territorial treasurer and county clerk of the amount of taxes assessed.

movable property, from the assessor, lists and returns of assessed taxes, shall subscribe three receipts, which shall be for the total amount of all such lists or taxes assessed, and shall specify the amount levied for each purpose, whether for Territorial, county, school or other purposes, which receipts shall be filed with the clerk of the board of county commissioners, one of which shall be transmitted by said clerk to the Territorial Auditor, one to the Territorial Treasurer, [and] one shall be kept in the office of the said clerk.

SEC. 27. The amounts of said lists and receipts, shall be charged respectively by said auditor, treasurer and clerk, to the treasurer; and such county treasurer shall be liable under his official bond for the collection of all taxes delivered to him by the assessor, or by his, (the county treasurer's,) predecessor in office, and shall be credited with all payments made to the Territorial treasurer of monies collected for Territorial purposes, with the amount of taxes transmitted to his successor in office, and also with the amount of taxes of such persons as may have absconded or become insolvent prior to the day when the taxes ought, according to the provisions of law, to have been collected. Provided, That it shall be proved to the satisfaction of the Territorial auditor and treasurer, and of the county commissioners respectively, by the oaths of disinterested parties, that the county treasurer used due diligence in the collection of the said taxes, and that failure to collect did not arise out of any neglect of duty; and said proof shall be furnished in such manner and form as the Territorial auditor and treasurer, and the board of county commissioners respectively, may prescribe.

County treasurers to be charged with amount assessed.

and credited with amount of payments made.

County treasurers to prove diligence.

SEC. 28. The county commissioners shall constitute a board for the correction of the assessment roll, and between the tenth and fifteenth day of June, and the tenth and fifteenth day of October of each year, sufficient public notice shall be given by the board of correction, of the time and place where the same shall be corrected; and any person feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any supposed error, and if any person returned as refusing to render a list, or to be sworn thereto, can show good cause, the penalty herein provided may be omitted.

County commissioners to be board of correction.

Notice of meeting of board to be given.

SEC. 29. On the first Monday in February, the board of county commissioners shall levy the requisite taxes for the current year.

SEC. 30. As soon as possible after the taxes are levied, the clerk shall make out a tax list in the tabular form, and in alphabetical order, having distinct columns for lands, and for town lots, and for carriages, out, [and] in a column by itself, the amount of each different tax, and having one or more columns for all delinquent taxes; but instead of a column for the amount of personal property, the word "personality" may be written across the column after the name and amount carried into the column of value, such list may be in the following form:

County clerk to make out tabular form of list.

1868 4th Regular.pdf

Names of Owners	Part of Section.	Section.	Township.	Range.	Acres.	Name of Town.	Lots.	Block.	Value.	County Tax.	Territorial Tax.	School Tax.	Road Tax.

SEC. 31. An entry is required to be made upon the tax list, showing what it is, and for what county and year it is, and the county clerk shall attach to the list his warrant under his hand and official seal, in general terms requiring the treasurer to collect the tax therein levied according to law, and no informality in the above requirements shall render any proceeding for the collection of taxes illegal. The clerk is required to cause the list to be delivered to the treasurer of the county, by the first day of July in each year, and take his receipt therefor, and such list is full and sufficient authority for the treasurer to collect all taxes contained therein.

County clerk to attach his official seal to list.

Clerk to deliver list to county treasurer on first day of July annually.

SEC. 32. Immediately after the assessment roll is corrected, the county clerk shall make out an abstract thereof, containing the whole amount of each species of property, and the value of the same, together with the total valuation of all property assessed, which abstract said clerk shall transmit forthwith to the auditor of the Territory.

Corrected asssessment roll to be transmitted by county clerk to Territorial auditor.

SEC. 33. If, on the assessment roll, or on the tax list, there be an error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the treasurer or assessor.

Corrections of names to be made on assessment roll or list.

SEC. 34. That no demand of taxes shall be necessary, except as provided in section fifteen of this act, but it is the duty of every person subject to taxation to attend in such township or district, at the time and place appointed by the treasurer, and pay his or her taxes, and if any one neglect to pay it before the fifteenth day of September following the levy of the tax, the treasurer is directed to make the same by distress and sale of his personal property, except such as is exempt from taxation, and the list alone shall be a sufficient warrant for such distress.

Tax to be collected by distress after Sept. 15th.

HeinOnline -- 1867 47 1867

1868 4th Regular.pdf

Manner and form of treasurer's roll.

SEC. 35. When the treasurer distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale, within five days after the day of taking, in the same manner that constables are required to do on execution, and the time of sale shall not be more than ten days from the day of taking, but he may adjourn the sale from time to time for a period not exceeding three days, and shall adjourn once at least when there are no bidders, and in case of an adjournment he shall put up a notice thereof at the place of sale; any surplus that may be remaining above the taxes, charging of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

Surplus to be returned to owner of property.

Treasurer to call posse when resisted.

SEC. 36. If the treasurer be resisted or impeded in the execution of his office he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not to exceed fifty dollars, to be recovered by civil action in the county; and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

Unpaid taxes to draw interest, to be lien against real estate.

SEC. 37. On the first day of January of each year, the unpaid taxes of the preceding year become delinquent; and shall draw interest at the rate of twenty-five per centum per annum, and taxes upon real property are hereby made a perpetual lien thereupon, against all persons or claimants except the United States and this Territory.

Lands to be sold first day of March each year.

SEC. 38. Before the first day of March in each year, the treasurer is directed to offer at public sale, at the court house in his county, all lands on which the taxes levied the preceding or any previous year still remain unpaid; but such sale shall not be void if not made till after the day named.

SEC. 39. The treasurer shall continue to receive payments of all taxes after the first day of January, upon the above terms, until paid by distress and sale.

Notice of sale of real estate to be given by the treasurer.

SEC. 40. The treasurer shall give notice of the sale of real property, by publication thereof once a week for four weeks, in a newspaper in his county, if there be one of weekly issue; the first of which shall be at least four weeks before the sale, and by a written notice posted in the door of the court house, or building commonly used therefor, for four weeks before sale; and if there be no such newspaper published in the county, the like notice shall be given by posting one written notice the above length of time, in some public place in each township or precinct in which any land to be sold is situated, and one on the court house door; such notice shall contain a notification that all lands on which the taxes of the preceding year or years (naming it) have not been paid, will be sold, and the time and place thereof, with a list of the lands. Ten per cent. upon the amount of the taxes due shall be added when the lands are advertised.

Ten per cent to be added.

Betwween the hours of 9 o'clock and 5 o'clock.

SEC. 41. Such sale is directed to take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and be adjourned from day to day, Sundays excepted, until all the lands are sold.

HeinOnline -- 1867 48 1867

Treasurer required to file with commissioners return of his sales.

SEC. 42. At the May session of the board of county commissioners, the treasurer is required to file in the county clerk's office a return of his sale of lands, retaining a copy in his office showing the land sold; the names of the owners so far as known; the names of the purchasers, and the sums paid by them; and also a copy of the notice of the sale, with a certificate of the services, verified by an affidavit; and such certificate shall be evidence.

Who to be considered highest bidder.

How property to be divided.

SEC. 43. The person who offers to pay the amount due on any parcel of land, for the smallest portion of the same is to be considered, the highest bidder; and when such portion constitutes one half or more of the parcel, it is to be taken from the east side thereof dividing it by a line running north and south, except that town lots are to be divided in each case lengthwise, by a line parallel with the proper lines of lots; if the portion be less than one-half, the tract is to be taken from the southeast corner, in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax save that which is due on the same exclusively; and the above directions concerning the divisions of a tract of land shall be modified so as to meet this requirement; and to that end the quantity of land bid for, may be obtained by drawing a division in any direction or form, so as to avoid the homestead; and when the homestead constitutes a part of the tract sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause a proceeding to be had similar to that required to a mechanic's lien. For the ascertainment of the homestead, and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and set it apart from the homestead.

When homestead to be sold.

Failure of bidder to pay.

SEC. 44. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale; if it has closed, he may again advertise it, specifically, and by description by one written notice posted for two weeks in the civil township in which the land lies, and one such notice on the court house; or the treasurer may recover the amount bid by civil action brought in the name of the county, in the township or precinct where the county seat is situated.

County treasurer to sign and deliver to purchaser a certificate of purchase.

SEC. 45. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase describing the property on which the taxes and cost were paid by the purchaser, as the same was described in record of sales; and also how much and what part of each tract or lot was sold; and stating the amount of each kind of tax, interest and cost for each tract or lot for which the same was sold as described in record of sales, and that payment has been made therefor. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate; for each certificate so delivered the purchaser shall pay a fee of one dollar to the county treasurer.

Fee of one dollar for each certificate.

SEC. 46. Such certificate of purchase shall be assignable by in-

Certificates assignable.

dorsement, and on assignment thereof, shall vest in the assignee or his legal representatives, all right and title of the original purchaser.

Property sold redeemable in one year.

SEC. 47. Real property, sold under the provisions of this act, may be redeemed at any time before the expiration of one year from the date of the sale, by the payment to the treasurer of the proper county, to be held by him subject to the order of purchaser, of the amount for which the same was sold, and thirty per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made; which fact may be shown by the treasurer's receipt. Provided, That if real property, of any minor, married women or lunatics, be sold for taxes, the same may be redeemed at any time within one year after such disability is removed by the guardian or legal representatives.

Certificate of redemption to be given by county treasurer.

SEC. 48. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this act, and being satisfied that such party has the right to redeem the same; and upon the payment of the proper amounts, issue to such party a certificate of redemption, setting forth the facts of the sale, substantially as contained in certificate of sale, the date of redemption, the amount paid and by whom redeemed; and he shall make the proper entrees in the book of sale in his office, and shall receive two dollars for such service.

Fee of two dollars for certificate of redemption.

Billiard tables and bar fixtures to be sold for license.

SEC. 49. That for the purpose of collecting the revenue of the Territory, and preventing the evasion of the license laws now in force upon the general statutes of the Territory, all billiard tables, bar fixtures and furniture, belonging to, or in use for carrying on, the business of any billiard hall, drinking saloon, restaurant or eating house, are held liable for the amount due for the license taxes assessed on the same; and it [is] hereby expressly provided, that upon the failure of any one keeping any such establishment, or exercising ownership thereon, to pay the license of the same in manner and form provided by law, the treasurer of the county where such establishment may be located, or properly authorized officers, whose duty it shall be to enforce the collection of any such license, may seize any such table, bar fixtures, and such appurtenances, and shall proceed to sell as upon executions at law, any such articles or so much thereof as may be required for the payment of such tax or license as may be due and owing, on account of same.

Purchasers of real estate to receive deed upon surrender of certificate of purchase.

SEC. 50. Immediately after the expiration of the time allowed for the redemption of any lands sold for taxes under the provisions of this act, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase.

Fee of five dollars for deed.

The county treasurer is required to demand five dollars for each deed made by him on such sale; but any number or parcels of land bought by one person, may be included in one deed, as may be desired by the purchaser.

SEC. 51. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, That, whereas, the following

described real property, viz: (Here follows the description.) Situated in the county of———, and Territory of Montana, was subject to taxation for the year or years A. D.———, and, whereas, the taxes assessed upon said real property for the year or years aforesaid, remained due and unpaid at the date of the sale hereinafter named; and, whereas, the treasurer of said county did, on the——day of ——, A. D., 18—, expose at public sale, at the court house, of the office of the county treasurer in the county aforesaid, in substantial conformity and with all the requisitions of the statutes in such case made and provided, the real property above described, for the payment of the taxes, interest and cost then due and remaining unpaid on said property; and, whereas, at the time and place aforesaid, A. B., of the county of———, and———, of———, having offered to pay the sum of——dollars, and——cents, being the whole amount of taxes unpaid on said property, (here follows the description of the property sold,) which was the least quantity bid for; and payment of such sum having been made by him to the said treasurer, the said property was stricken off to him at that price; and, whereas, the said A. B. did, on the——day of——A. D., 18—, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to E. T., of the county of———, and———of———; and whereas, the time of redemption having elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided by law; now, therefore, I, C. D.,——of the county aforesaid, for and in consideration of the said sum, to the———paid as aforesaid, and by virtue of the statute in such case made and provided, have bargained and sold, and by these presents do grant, bargain and sell unto the said A. B., his heirs and assigns, the real property last herein described; to have and to hold unto him, the said A. B., his heirs and assigns forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C. D.,——— as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name, on this——day of ——, 18—. C. D.

Form of deed

TERRITORY OF MONTANA,
———COUNTY. SS.

I hereby certify, that before me———, in and for said county, personally appeared the above named C. D.———of said county, at the date of the execution of the above conveyance, and to me known to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county; and he acknowledged the execution of the same to be his voluntary act and deed, as———of said county, for the purpose therein expressed. Given under my hand and seal, this——day of——, A. D. 18—.

Owners of property to be held harmless against errors and wrongs of county treasurers.

SEC. 52. When, by the mistake, or the wrongful act of the county treasurer, land has been sold on which no tax was due at the time, the county is to hold the purchaser harmless, by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold; and the treasurer and his sureties will be liable for the amount, to the county, on his bond, or the purchaser may recover directly from the treasurer.

County treasurers to report and pay over to the Territorial treasurer every three months.

SEC. 53. Each county treasurer shall, at the expiration of each and every three months, report and pay, or cause to be paid, over to the Territorial Treasurer, the total amount of monies collected for Territorial purposes; and shall complete the collection of all lists delivered to him within six months after the lists shall have been delivered to him by the assessor. If any county treasurer shall fail, either to collect or render his account as herein provided, it shall be the duty of the Territorial Treasurer, and he is hereby authorized and required to commence proceedings for a forfeiture of his bond; and if such treasurer shall fail or refuse to so prosecute, then any taxpayer in the Territory may commence such prosecution.

County treasurers to be ex-officio collectors of taxes.

SEC. 54. The county treasurer of each county in this Territory, shall be, by virtue of his office, collector of taxes therein, and shall perform such other duties in that regard as are prescribed by law.

SEC. 55. In addition to the tax required to be levied and collected by the provisions of this act, there shall be levied by the board of county commissioners of each county, at the same time the ad valorem tax is levied by them, a tax of two dollars upon each male inhabitant of this Territory over the age of twenty-one years, and under the age of forty-five years. Such tax shall be denominated a poor tax; and it shall be the duty of the treasurer of each county to collect the same, in manner as provided in this act in relation to other taxes, by seizing and selling any property belonging to said inhabitant; and in case the said inhabitant shall have no property which may become seized by the treasurer, the said treasurer may sue for the same, and recover judgment by garnishees or otherwise, as provided in cases of debt; to be obtained in any court of competent jurisdiction; and the said treasurer shall be allowed twenty per cent. on all such monies, in case he shall faithfully perform his duties in collecting said tax from each and every inhabitant as herein prescribed: Provided, no costs shall be allowed, unless the same can be made out of the delinquent.

Capitation tax to be appropriated to the poor.

SEC. 56. The act entitled "An Act for the collection of Revenue," approved February 6th, 1865, and all acts or parts of acts conflicting with this act, be, and the same are hereby repealed.

SEC. 57. This act to take effect and be in force from and after its passage.

[Approved, December 23, 1867.]

AN ACT to provide for the Funding of the Debt of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 3, 1867.

Treasurer to issue bonds for Territorial warrants on or before June first, 1868.

SEC. 1. That the Treasurer of Montana Territory shall, on or before the first day of June, A. D., 1868, issue bonds of the Territory of Montana, as hereinafter provided, for all Territorial warrants outstanding and unpaid on the first day of November, A. D. 1867, which may be presented for that purpose on or before the first of June, 1868.

Bonds to the amount of sixty thousand dollars, payable five years from date, interest fifteen per cent. per annum.

SEC. 2. That the Treasurer of the Territory of Montana is hereby authorized to issue on the credit of Montana Territory, coupon bonds for the purposes set forth in this act, to an amount not exceeding the amount of sixty thousand dollars, or so much thereof as may be necessary, redeemable at the pleasure of the Territory, after two years, and payable five years from date, bearing interest at the rate of fifteen per cent. per annum; and the bonds herein authorized shall be of the denomination of fifty dollars and one hundred dollars each.

Warrants to be presented to Territorial auditor, who shall certify the amount.

SEC. 3. Any holders of Territorial warrants, outstanding and unpaid at the time mentioned in section one of this act, shall present the same to the Territorial Auditor, who shall certify the amount thereof, together with the interest accrued thereon, to said holder; and the Territorial Treasurer, upon such certificate, shall issue to said holder bonds to the amount of said certificate: Provided, That said warrants shall be issued in some multiple of fifty dollars; and if any amount so held shall be of a sum less than fifty dollars, or less than any bond of higher denomination, the holder shall make up the amount in money, so as to equal the amount of the face of the bond to be issued.

Governor to direct form of bond; to be countersigned by Secretary of Territory.

SEC. 4. The coupon bonds authorized to be issued by this act, shall be in such form as the Governor of the Territory may direct, and shall bear the signatures of the Auditor and Treasurer of the Territory, and shall be sealed and countersigned by the Secretary of the Territory; and the coupons attached shall be signed by the Auditor and Treasurer. Each bond shall be registered by the treasurer in a book to be kept for that purpose, which book shall show the amounts of bonds, to whom issued, and the date of the issue; and the Auditor shall keep an account of the amounts certified by him in lieu of the warrants hereby called in, and shall report the same to the next Legislature; preserving the redeemed warrants subject to its order.

SEC. 5. The faith of the Territory of Montana is hereby solemnly pledged for the payment of the interest, and redemption of the principal of the bonds authorized to be issued by this act.

HeinOnline -- 1867 53 1867

Counterfeiting of bonds to be felony.

SEC. 6. That if any person or persons shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or shall willfully aid or assist in falsely making, forging, counterfeiting or altering any bonds or coupons authorized to be issued under the authority of this act, or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or shall have or keep in possession, or conceal with intent to utter, publish or sell, any such false, forged, counterfeited or altered bond or coupon, with intent to defraud any body corporate or politic, or any other person or persons whatsoever; every such person so offending shall be deemed guilty of felony, and shall, upon conviction thereof, be punished by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labor, not exceeding fifteen years, according to the aggravation of the offense.

SEC. 7. For the purpose of carrying into effect the provisions of this act, the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any monies in the Territorial treasury not otherwise appropriated; and placed at the disposal of the Governor.

Interest to be paid semi-annually.

SEC. 8. The Treasurer of the Territory of Montana shall pay, in lawful money of the United States, on the first day of June, A. D. 1868, the interest on the amount of the bonds so issued; and semi-annually thereafter, upon presentation at his office of the coupons which shall show the amount due on each, and the number of the bond to which they refer; and the amount of interest so paid shall appear in his annual report to the Legislature, and the principal and interest upon said bonds shall be payable in the city of New York, as the holder or holders thereof may elect: Provided, That the holder or holders shall give the Territorial Treasurer due notice of a designated bank in said city of New York; at which said bond or bonds, and interest thereon shall be paid; otherwise the same shall be payable at the seat of government of Montana Territory.

A sinking fund for the payment of principal.

SEC. 9. The Territorial Treasurer shall reserve and set aside twenty-five per cent of all monies received into the Territorial treasury for the purpose of meeting the payment of the interest accruing on the bonds issued; and all surplus remaining of the twenty-five per cent. so received, after the interest shall be paid as herein before provided, shall be set aside as a sinking fund for the reduction of the principal, as provided in section ten of this act.

Notice to redeem bonds to be given in two years from their issue.

SEC. 10. Whenever at any time after the expiration of two years after the issuing of the bonds herein authorized, the [It] sum in the Territorial treasury shall exceed the sum of two thousand dollars, and from time to time thereafter when it may occur, the Treasurer shall cause a notice to be published in two newspapers of Montana Territory, that he will, in thirty days from the date of such notice, redeem certain bonds, giving their numbers, preference being given to the oldest issue; and if at the expiration of the time of notice so given the holder or holders shall fail or neglect to return the same, interest thereon shall cease; but the Treasurer shall at all times thereafter be ready to redeem the same on presentation.

HeinOnline -- 1867 54 1867

SEC. 11. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 12. This act shall take effect and be in force from and after its passage and approval.

[Approved, December 3, 1867.]

AN ACT defining the duties of Territorial Auditor and Territorial Treasurer of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec 3. 1867.

SEC. 1. That the Auditor of the Territory shall issue no warrants drawn upon the Territorial Treasurer in favor of any person, without express authority of law, and then shall specify the name of the party, the service performed for which the same is issued, with the amount and number of the warrant.

SEC. 2. The Auditor shall keep a record of all warrants issued by him, and shall report to the Legislative Assembly of the Territory at the commencement of each session thereof, the number and amount of warrants issued by him, and under what law the same have been issued. Auditor to keep a record of all warrants and report to the legislature.

SEC. 3. He shall furnish the collector of each county or district with blank receipts for money collected, or to be collected, subscribed by himself, taking the collector's receipt of the counties for the same.

SEC. 4. He shall direct prosecution in the name of the Territory against all delinquent collectors of the Territorial revenue, and against all debtors of the Territory, or persons being in possession of the public funds, money or property, who may neglect or refuse to pay or deliver the same to the proper officer. Auditor to prosecute delinquents.

SEC. 5. He shall audit all claims against the treasury, and when the law recognizes a claim, but no appropriation has been made therefor, shall settle the claim and give the claimant a certificate thereof, and report the same to the Legislative Assembly.

SEC. 6. He shall be the custodian of, and shall keep, all books, papers, records, documents, vouchers and all conveyances, leases, mortgages, bonds, and other securities, appertaining to the fiscal affairs, and property of the Territory, which are not required by law to be kept in some other office; and to have charge of all [other] Auditor to be custodian of Territorial property.

property of the Territory where no other provision is made by law for its custody.

Auditor to furnish Governor with information.

SEC. 7. He shall furnish to the Governor, on his requisition, information in writing, upon any subject connected with his office, and suggest to the governor or to the Legislative Assembly, plans for improvement and management of the public revenue and property.

Auditor shall report to Legislative Assembly a statement of revenue, funds and taxable property.

SEC. 8. He shall report to the Legislative Assembly, at its regular session in this Territory, and at such other times as it may require, a complete statement of the revenue, funds, income, taxable property, and other resources of the Territory, and of the property of [the] Territory known to his office; and of the public revenue and expenditures of the Territory since his last report, up to the Monday immediately preceding each regular session, with a detailed estimate of the expenditures to be defrayed by the treasury for the ensuing year, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations, and such as are by law required to be provided for, and the amount of probable deficiency of any former appropriations. He shall make a full detailed statement of all expenditures, claims, and demands by him audited and allowed; and shall in his report, give separately the items and claims of each and all persons in whose favor he has audited any demand, and under what law allowed, and the date of the allowance.

Auditor and treasurer failing or refusing to report according to law shall be deemed guilty of a misdemeanor.

In case any Auditor or Treasurer shall fail or refuse to make his settlement or statement at the time and in the manner required in the this act, he shall be deemed guilty of a misdemeanor; and if he shall still refuse to settle upon being requested by the Legislative Assembly, it shall be the duty of the President of the Council to issue his warrant for the apprehension of such Auditor or Treasurer, and cause them, or either of them, to be brought before the Council to show cause why he refuses to comply; and the President, if proper cause is not shown, may commit him or them to the Territorial prison, until he or they shall make such settlement.

SEC. 9. The Auditor and Treasurer shall perform all other duties which may from time to time be required of them by law; and if any officer who is accountable to the Treasurer in respect to any money or property, neglects to render his accounts to the Auditor within the time prescribed by law, or if no such time be prescribed by law, then within twenty days after he be required so to do by the Auditor, the Auditor shall state an amount against him from the books of the Anditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of ten per cent. per annum on the aggregate from the time when the account should have been rendered; all of which shall be recovered by an action, brought on such account stated, or on the official bond of the officer. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled an account with the Auditor, fails to pay the amount due from him, the Auditor shall charge him twenty per cent. damages on the amount due, with interest on the aggregate from the time the first sum was payable, at the rate of ten per cent. per annum; and the whole may be recovered by an action brought on either such account stated, or

HeinOnline -- 1867 56 1867

1868 4th Regular.pdf

on the official bond of the officer; and he shall forfeit his commission; the penal provisions in this being subject to any legal defense which the officer may have against the account as stated by the Auditor; but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time mentioned in this section. In those cases where the Auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisition therefor to the person or officer called upon, allowing reasonable time, which being served as a notice in a civil action by the sheriff or any constable of the county in which the person or officer called upon resides or exercises his office; and the sheriff or constable shall return the notice to the Auditor with the service endorsed thereon, which shall be evidence of the making of the requisition therein expressed. All things pertaining to the Auditor's office are at all times open to the inspection of the Governor, and members of the Legislative Assembly of the Territory of Montana; and to any committee appointed by either House of the Legislative Assembly appointed to examine the same.

Auditor's office to be open, together with all things appertaining to it, to inspection of Governor and Legislature.

SEC. 10. The Auditor shall keep his office at the seat of government, and shall furnish his office with all needful blanks, maps, books, stationery, fuel, and cases for books, etc.

SEC. 11. The Auditor shall make a quarterly report of the expenses of his office, specifying each item and to whom paid.

SEC. 12. The Auditor shall receive a salary of seven hundred dollars, which shall be paid quarterly out of the Territorial treasury; Provided, That any person desires [desiring] more than one warrant to be issued on an account stated for any entire service performed, said Auditor shall receive from the person so desiring more than one warrant, the sum of twenty-five cents for each warrant so demanded.

SEC. 13. The Auditor shall receive in addition to his salary, five per cent. of all warrants issued by him.

SEC. 14. It shall be the duty of the Territorial Treasurer to keep a book in which he shall enter all Territorial warrants presented for payment, which shall bear date subsequent to the thirty-first day of October, A. D. 1867, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented; and to keep a true account of all money received, and the disbursements thereof. He shall render his accounts to the Auditor for settlement quarterly, or oftener if required; and he shall also report to the Legislative Assembly at the commencement of each regular session, the condition of the treasury, and its condition for the preceding year.

Warrants to be paid in the order they are presented.

Treasurer to render his accounts quarterly.

SEC. 15. The Treasurer shall quarterly post upon the door of his office, and publish in some newspaper published at the seat of government, a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the quarter last; and from the date of such notice the interest on all such warrants thus posted shall cease; but the Treasurer

HeinOnline -- 1867 57 1867

shall hold in readiness such monies to pay such warrants upon presentation.

SEC. 16. The Treasurer shall keep his office at the seat of government, which shall be furnished at the expense of the Territory with all needful maps, books, blanks, cases for books, stationery, fuel, etc., necessary; and his books shall be open at all times for the inspection of the Governor, the members of the Legislative Assembly, and to any committee appointed to examine them by either House thereof.

SEC. 17. The Treasurer shall make a quarterly report to the Auditor of the expense of his office, specifying each item and to whom paid.

SEC. 18. When any amount is paid into the treasury, the Treasurer is required to give the person paying, duplicate receipts, stating the funds to which the money belongs, one of which may be kept by him, and the other must be delivered to the Auditor, in order to obtain proper credit; and the amount shall be charged to the treasurer.

Treasurer to receive twenty-five cents for each warrant registered.

SEC. 19. The Treasurer shall receive a salary of seven hundred dollars, which shall be paid quarterly out of the Territorial treasury, and in addition to his salary, shall receive five per cent, on the first twenty-five thousand dollars, and three per cent. on all additional amounts, with the additional sum of twenty-five cents for each warrant registered by him, to be paid by the party presenting the same.

SEC. 20. The Auditor and Treasurer shall have full access to each other's office for the inspection of all books, papers, and accounts thereof; and to all other offices of the Territory for the inspection of all such books as concern their duties.

Treasurer and auditor to administer oaths.

SEC. 21. They are authorized to administer oaths or affirmations, compelling the attendance of witnesses as in courts of record, in all cases touching the duties of their offices respectively.

Treasurer and auditor to give bonds.

SEC. 22. The Auditor shall be required to give a bond, with two or more sufficient sureties, in the sum of ten thousand dollars, to be approved by the Secretary, or acting Secretary of the Territory, before entering upon the duties of his office; and whenever the Secretary shall deem his bond insufficient thereafter, the Secretary shall require, and it shall be the duty of the Auditor to file one sufficient according to law.

SEC. 23. The Treasurer shall be required to give a bond with two or more sufficient sureties, in the sum of twenty-five thousand dollars, to be approved by the Secretary or acting Secretary of the Territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the Secretary or acting Secretary of the Territory, or by the Legislative Assembly thereof.

SEC. 24. That an act entitled "An Act defining the duties of the Territorial Auditor and Treasurer of the Territory of Montana," approved February 8th, A. D. 1865, be, and the same is hereby repealed.

HeinOnline -- 1867 58 1867

SEC. 25. This act to take effect and be in force from and after its passage and approval.

[Approved, December 3, 1867.]

AN ACT defining the duties of County Treasurers and the payment of County Warrants.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 19, 1867.

SEC. 1. That from and after the passage of this act all taxes and licenses due this Territory, or any county thereof, shall be paid in money at the time the same may become due: Provided, That any person or persons who may have rendered services to the Territory, or any county thereof, and who hold warrants issued therefor, in his or their name or names, shall have the privilege of paying his or their taxes or licenses with such warrants, in proportion of sums due the proper county or Territory.

Persons who have performed service to county or territory may pay tax or license in warrants.

SEC. 2. It shall be the duty of the several county treasurers within the Territory to keep a book in which they shall enter all county warrants of their proper county presented for payment, in the order in which they are presented, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented.

Warrants to be paid in the order they are presented

SEC. 3. The county treasurers of the several counties of this Territory shall, on the first Monday of every month, post upon the door of their offices, a list of all warrants that they have funds in their hands to redeem or pay, the payment of which has not been demanded during the month last passed, and from the date of such notice the interest on all warrants thus posted shall cease; and it shall be the duty of such treasurer to file a true copy of said notice in the office of the county clerk of his county, which clerk shall file and preserve the same in his office; which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such posting.

Notice of payment to be posted monthly.

Interest to cease after posting.

Copy of notice in county clerk's office.

SEC. 4. The treasurers of the several counties of this Territory shall pay over to the Territorial Treasurer every three months all monies that they have in their hands belonging to the Territory.

SEC. 5. The county treasurer, at the time of paying over any money to the Territorial Treasurer, shall take from him duplicate

1868 4th Regular.pdf

Duplicate receipts.

receipts therefor, one of which he shall deposit with the Territorial Auditor, and retain the other as his voucher on settlement.

Fees of county treasurers.

SEC. 6. The county treasurer shall receive the following fees, beginning with every fiscal year: twelve and one-half per cent. on the first five thousand dollars; for all sums between five and ten thousand dollars, eight per cent; for all sums over ten thousand dollars, four per cent.; for every license issued, one dollar, to be paid by the party applying for the same; for every mile traveled in going and returning in making settlement with the Territorial Auditor and Treasurer, thirty cents; for levying on and selling property for taxes, the same fees as allowed to sheriffs, to be paid by the delinquent.

SEC. 7. Section thirty-five, and so much of section thirty-six of the revenue act as authorizes county treasurers to issue balance certificates on Territorial or county warrants, and all acts and parts of acts conflicting with this act, are hereby repealed.

SEC. 8. This act shall take effect and be in force from and after its passage and approval.

[Approved, November 9, 1867.]

AN ACT relative to the Pre-emption of Town Sites upon public lands and the disposal of trusts created thereby.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Corporate authorities or probate judge to enter in the land office, upon petition of voters, the land that city or town is entitled to under U. S. laws.

SEC. 1. That whenever the citizens of any town located, or that may hereafter be located, upon the public lands of the United States shall desire to obtain title to the townsite thus occupied by them, it shall be lawful for the corporate authorities of such town, or if the same be unincorporated, then for the judge of the probate court of the county in which such town is located, whenever such desire of the citizens is certified to such incorporate authorities or judge of the probate court, as the case may be, by a petition of a majority of the legal voters of such town, to enter at the proper land office the full amount of land that such town may be entitled to under the provisions of the act of Congress entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2d, 1867, or so much thereof as may be necessary for the pur-

HeinOnline -- 1867 60 1867

1868 4th Regular.pdf

poses of said town, in trust for the several use and benefit of the occupants thereof, according to their respective interest.

SEC. 2. The said incorporate authorities, or judge of the probate court, as the case may be, shall have full power to do all and singular the several acts and things necessary and appertaining to the entry of said land at the proper land office.

City authorities or probate judge to have town sites surveyed.

SEC. 3. And the said incorporate authorities, or judge of the probate court, as the case may be, shall within three months from and after the entry of such town site, unless a survey and an accurate plat thereof has previously been made, cause the same to be surveyed and a plat thereof made, which said survey and plat thereof shall conform as near as may be to the existing rights, interest and claims of the occupants thereof. Said plat and survey shall be submitted to and accepted by the board of county commissioners in the county where the said town is situated.

Survey to be accepted by county commissioners.

Survey to be filed in county recorder's office.

SEC. 4. Such town site shall be surveyed into blocks, lots, streets and alleys; but no lot shall exceed in area four thousand two hundred square feet; and the plat of such town shall be filed in the office of the county recorder, for the county in which such town is situated; and thereafter the streets and alleys designated in such plat shall remain dedicated to public use forever.

Claimants of lots to file in the office of incorporate authorities or probate judge.

SEC. 5. Immediately after such survey and plat has been made, or if a survey and plat has been made previous to the entry, according to the provisions of section three of this act, then immediately after the entry of the lands at the proper land office, as provided in first section of this act, the corporate authorities, or the probate judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or if no newspaper be published in such town, then by advertisement posted up in twelve of the most public places in such town, for at least two months, giving notice of such entry, and requiring every claimant or claimants of any town lot or lots, to file in the office of such incorporate authorities, or probate judge, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice.

Statement of claim shall be in writing, verified by affidavit.

Statement to specify the grounds of such claim with minute description of lot, date of first occupation, improvements, &c.

SEC. 6. Such statements shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well bound book to be provided and kept for such purpose by such incorporate authorities, or judge of probate, as the case may be. Such statement shall specify the grounds of such claim, particularly describing the lot or lots claimed, the date as near as may be of the occupation of said lot or lots, and by whom; what improvements have been made on said lot or lots and the value thereof; and that such lot or lots are now actually possessed and occupied by such claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another.

Parties to pay the price fixed by this act within six months after the publication by cor-

SEC. 7. All claimants of any lot or lots in any town site preempted under the provisions of this act shall, within six months from and after the expiration of the notice mentioned and provided for in section five of this act, make proof of such claim and of the

HeinOnline -- 1867 61 1867

1868 4th Regular.pdf

porate authorities or probate judge of the entry of town site in U. S. land office.

facts contained in such statement, before the corporate authorities aforesaid, or the probate judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots; and no proof shall be permitted to be made after the expiration of the time prescribed in this section.

Each claimant entitled to one lot, four thousand two hundred square feet.

SEC. 8. The number of lots which any one claimant shall be entitled to under the provisions of this act, shall be, one lot, not exceeding in area four thousand two hundred square feet, and one additional lot upon which said claimant may have substantial improvements, not exceeding in area four thousand two hundred square feet.

Corporate authorities or probate judge to take proof and award to claimant entitled.

SEC. 9. The said probate judge, or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed as provided for in this act, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim as herein provided, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and if the same shall be found to comply with the provisions of this act, and no conflicting claim shall have been filed, the said probate judge or corporate authorities, as the case may be, shall, upon payment of the fees hereinafter prescribed, proceed forthwith to make to such claimant or claimants a good and sufficient deed for such lot or lots.

Non-contested cases, fee of four dollars for hearing proof and making deed.

SEC. 10. The fees of the probate judge or corporate authorities shall be, in case such claim or claims is not contested, four dollars for hearing the proof and making the deed; and in contested cases, in addition to the four dollars, the same fees as allowed by law in civil cases in justices courts.

Two days notice in contested cases.

SEC. 11. In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the probate judge or corporate authorities, as the case may be, shall hear the testimony relating thereto at such time as they may fix therefor; and after two days notice of such time and the place of hearing given to each and every contestant, they shall proceed to hear and decide such claims, in accordance with the principles of right and justice, and the provisions of this act; and in case there shall be no appeal taken from such decision as hereinafter provided, then after ten days from the rendering of such decision, the said probate judge or corporate authorities, as the case may be, shall proceed to make a deed as provided in section nine of this act, to the person or persons to whom the lot or lots may have been awarded: Provided, The corporate authorities or judge, as the case may be, may adjourn from time to time as they may deem just for the fair adjudication of said claim or claims.

Appeals to district court.

SEC. 12. In case any claimant or claimants of any lot or lots which may have been awarded as provided in the last section, shall feel aggrieved by such decision, such claimant or claimants make [may] take an appeal to the district court of the county in which the same is located. Such appeal shall be made by filing with the judge or corporate authorities, as the case may be, a notice in writing of such appeal, and also a copy of such notice with the clerk of the district court; and a complaint in the nature of an action for the

HeinOnline -- 1867 62 1867

recovery of the possession, or if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting; and in all respects the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court.

Notice of appeal in writing to be filed with corporate authorities or probate judge and copy with clerk of district court.

SEC. 13. When notice of appeal to the district court shall have been filed with the probate judge or corporate authorities, as the case may be, the power to make a deed as provided in section nine of this act, shall be suspended until the appeal be dismissed or finally determined; and upon such dismissal or final determination, such judge or corporate authorities aforesaid, shall make a deed to the party found by such determination to be entitled thereto.

Power of corporate authorities or probate judge suspended until final action by district court.

SEC. 14. Each claimant shall deposit with the probate judge or corporate authorities, as the case may be, at the time of filing his statement as aforesaid, the sum of ten dollars for each lot claimed, as the purchase money thereof, which shall be immediately deposited with the county treasurer, if the probate judge be the trustee, and with city treasurer if the corporate authorities be the trustee.

Each claimant to deposit ten dollars upon filing his claim.

SEC. 15. The probate judge or corporate authorities, as the case may be, are hereby authorized and empowered to borrow money at the customary rate of interest, to defray the expenses of entry, surveying and plating of such town site, and to give their obligation in writing therefor, for the payment of which the monies received as the purchase money of the lots as hereinbefore provided, are hereby pledged and shall be applied to the liquidation of such obligation, as the same is received by warrants to be drawn by the probate judge or corporate authorities, upon the county or city treasurer, as the case may be.

Corporate authorities or probate judge to borrow money to defray expenses of entry, &c.

SEC. 16. This act to take effect from and after its passage.

[Approved, December 12, 1867.]

AN ACT regulating Descents and Distributions.

Nov. 21, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana, as follows:

SEC. 1. When any person having title to any real estate of inheritance, or personal estate undisposed of, or otherwise limited by

1868 4th Regular.pdf

To whom estate shall descend at law.

marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts, and the widow's dower, in the following course: First, To his children or their descendants, in equal parts; second, If there be no children, or their descendants, then to his father, mother, brothers and sisters, and their descendants, in equal parts; third, If there be no children or their descendants, father, mother, brother or sister, nor their descendants, then to the husband or wife; if there be no husband or wife, then to the grandfather, grandmother, uncles and aunts, and their descendants, in equal parts; fourth, If there be no children or their descendants, father, mother, brother or sister, or their descendants, husband or wife, grandfather, grandmother, uncle, aunt, or their descendants, then to their great grandfathers, great grandmothers, or their descendants, in equal parts; and so on in other cases without end passing to the nearest lineal ancestors, and their children and descendants, in equal parts.

Posthumous descendants to inherit.

SEC. 2. All posthumous children or descendants of the intestate shall inherit in like manner as if born in the life time of the intestate; but no right of inheritance shall accrue to any person other than children or descendants of the intestate, unless they are in being and capable in law to take as heirs, at the time of the intestate's death.

SEC. 3. If there be no children or their descendants, father, mother, brother or sister, nor their descendants, husband or wife, nor any paternal nor maternal kindred capable of inheriting it (the whole) shall go to her or his kindred, (or the wife or husband of the intestate) in the like course as if such wife or husband had survived the intestate, [and] died entitled to the estate.

Ascendants and collaterals.

SEC. 4. When the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood; but if all such collaterals be of the half blood, they shall have whole portions, only giving to the ascendants double portions.

Per capita and per stirpes.

SEC. 5. When several lineal descendants, all of equal degrees of consanguinity to the intestate, or his father, mother, brothers and sisters, or his grandfather, grandmother, uncle or aunts, or any living ancestors and their children, come into partition, they shall take per capita, that is by persons, where a part of them are dead and part living, and the issue of those dead have a right to partition, such issue shall take per stirpes, that is, the share of the deceased parents.

Life time advancements.

SEC. 6. When any of the children of the intestate shall have received in his life time any real or personal estate, by the way of advancement, shall choose to come into parcenary with the other parceners, such advancement shall be brought into hotchpot with the estate deceased.

SEC. 7. Maintaining, educating, or giving money to a child un-

HeinOnline -- 1867 64 1867

1868 4th Regular.pdf

der the age of majority, without any view to a portion or settlement in life, shall not be deemed an advancement.

SEC. 8. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is or has been an alien.

Bastards shall inherit through mother.

SEC. 9. Bastards shall be capable of inheriting on part of their mother, in like manner as if they had been lawfully begotten of such mother.

Bastards to become legitimate by intermarriage.

SEC. 10. If a man,, having by a woman a child or children, and shall intermarry with her, and shall recognize such child or children to be his, they shall thereby become legitimate.

SEC. 11. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

SEC. 12. Be it further enacted, That this law take effect from and after its passage.

[Approved, November 21, 1867.]

AN ACT concerning Foreign Corporations.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 9, 1867.

Foreign corporations to file copy of charter with Secretary of Territory and recorder of county.

SEC. 1. That hereafter all mining, manufacturing and other companies or corporations incorporated by the Legislature of any State or Territory of the United States, or incorporated under the general laws of incorporation of any State or Territory other than this Territory and incorporated for the purpose of carrying on or doing business of any kind, nature and description whatever in this Territory, shall, before they proceed to do business under the charter or certificate of incorporation in this Territory, file for record with the Secretary of the Territory and also in the office of the recorder of the county in which they are carrying on business, the charter or certificate of incorporation of said company or corporation, duly authenticated, or of the copy of said charter or certificate of incorporation; and the certificate of the president and secretary of said company or corporation, verified under oath by either of the said officers or the superintendent or managing agent thereof, that the copy of said charter or certificate of incorporation is a true and correct copy of the original charter or certificate of

HeinOnline -- 1867 65 1867

1868 4th Regular.pdf

incorporation granted to the persons therein named or their successors, and the charter or certificate of incorporation was granted at the time and place therein mentioned and under the law of the State or Territory designated; and said foreign incorporators shall remunerate the Secretary and recorder for the recording of the same, and said charter so recorded shall be recognized in the courts of this Territory as their foreign act of incorporation.

Charter to be filed within thirty days

SEC. 2. That any company or corporation, incorporated as in section one of this act, that shall neglect or refuse for the period of thirty days to file for record their charter or certificate of incorporation or copy thereof, with the Secretary of the Territory and county recorder of the county wherein such business may be carried on, shall be deemed guilty of willful negligence on the part of said company or corporation, and thereafter any person or persons maintaining or prosecuting any civil action in any court of this Territory against said company or corporation so neglecting or refusing to file for record their charter or certificate of incorporation or copy thereof, with the Secretary of the Territory and county recorder as heretofore provided, shall not be held to prove on trial the incorporation of said company or corporation by the original charter or certificate of incorporation or act of incorporation, but the same may be proved by general reputation.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved, December 9, 1867.]

AN ACT to amend an act entitled, "An Act to establish [a] Common School System for the Territory of Montana," approved February 7, 1867.

Dec. 13, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Board of county commissioners to levy a tax of three mills for school purposes.

SEC. 1. That section two of chapter one of said act be so amended as to authorize and require the Board of County Commissioners of their respective counties in this Territory to levy a school tax of not less than one nor more than three mills on the dollar on all taxable property within their respective counties for the support of common schools, instead of one mill on the dollar as provided in section two of said act.

SEC. 2. That section four of chapter one of said act be so amended

HeinOnline -- 1867 66 1867

1868 4th Regular.pdf

as to authorize and require the auditors of the several counties in the Territory to make a report to the county superintendent of common schools within their respective counties at least twenty days before the first day of May and November of each year, [of] the amount of taxes levied in their respective counties for that year; and for the purposes of this act the county clerk shall be ex-officio auditor; and all officers mentioned in this act and the act of which this is amendatory, who shall fail or neglect to perform any of the duties required by either of said acts, shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars and not more than fifty dollars, for each neglect; and such fine shall be paid into the county treasury for the benefit of the common schools of said county.

County auditor to report to county superintendent of common schools.

Failure to report to be deemed misdemeanor.

SEC. 3. That section eight of chapter one of said act be so amended as to authorize and require the county superintendents of the several counties of the Territory to make and furnish a statement required by said section, twice a year, instead of once a year, and that said statement be made and furnished on or before the first day of May and November of each year.

County superintendents to report twice each year.

SEC. 4. That section nine of chapter two of said act be so amended as to authorize and require the county superintendents of the several counties of this Territory to make an apportionment of the school fund in the county treasury subject to his order, on or before the first day of May and November of each year.

Superintendents to apportion school fund.

SEC. 5. That the county treasurers of the several counties of the Territory shall make [a] report to the county superintendents of their respective counties of all monies in their possession subject to the order of said superintendents, at least twenty days before the first day of May and November of each year; and said report shall state the source from which said monies were derived, and pay over all monies to the county superintendents as required by said superintendents for school purposes.

County treasurers to report to county superintendents twice each year.

SEC. 6. That the county superintendents of the several counties of the Territory shall make out a concise statement of the number of schools taught within their respective counties, and the number of children having attended said schools, the number of teachers employed, the amount of monies paid such teachers, the amount of school funds collected, the amount expended and the purposes for which it is expended, and transmit the same to the superintendent of public instruction for the Territory on the first day of November of each year.

County superintendents to report to Territorial superintendent Nov. 1st each year.

SEC. 7. That all laws conflicting with the provisions of this act be and the same are hereby repealed.

SEC. 8. That the trustees of each school district in each county be, and are hereby authorized to use the school monies under their control, so far as the same may be necessary, for the purpose of procuring fuel for the use of the schools in their respective districts, as also for the purpose of repairing any building that may be the property of the school district of which they are trustees.

School trustees to furnish fuel and repair buildings.

HeinOnline -- 1867 67 1867

1868 4th Regular.pdf

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

[Approved December 13, 1867.]

AN ACT entitled, "An Act to amend an act to regulate proceedings in civil cases in the Courts of Justice of the Territory of Montana.

Dec. 6, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That section twenty-one of an act entitled "an act to regulate proceedings in civil cases in the courts of justice of the Territory of Montana," be, and the same is hereby amended so as to read as follows:

Change of venue.

The court may on motion change the place of trial in the following cases: First, when the county designated in the complaint is not the proper county; second, when there is reason to believe that an impartial trial cannot be had in said cause by reason of the bias or the prejudice of the judge before whom the same is pending, or by reason of the bias or prejudice of the citizens of the county where said action is pending; third, when the convenience of witnesses or the ends of justice would be promoted by said change; fourth, when from any cause the judge is disqualified from acting in said action; provided, however, that when an affidavit is made by any party to said action or proceeding, or by his or their attorney that the party making the application, and on whose behalf the affidavit is made, cannot have a fair and impartial trial in said action by reason of the bias or prejudice of the judge before whom said action is then pending, such judge shall, and it is hereby made his duty to immediately order said action to be transferred to some other county in said Territory, outside of his judicial district, on payment of the costs that have accrued in said cause in said court, up to the time of making such application; and provided further, that the same order shall be made when the party making the application, or his or their attorney, shall make affidavit that the party or parties on whose behalf the application is made, cannot have a fair and impartial trial by reason of the bias or prejudice of the citizens of the county where said action is then pending; provided, that for the last mentioned cause said action may be transferred by consent of the attorneys on both sides thereof to any other county within said judi-

Bias of judge or citizens of county.

Costs to be paid up to time of change.

Changed by agreement of attorneys.

HeinOnline -- 1867 68 1867

1868 4th Regular.pdf

cial district; and after the filing of the affidavit or affidavits hereinbefore mentioned, said court shall no longer have or exercise any jurisdiction or control whatever over said action, except to make said order changing the place of trial. This act shall apply to all actions now pending or that may hereafter be brought in the Territory of Montana, and shall be in force from and after its passage.

Actions now pending.

SEC. 2. All acts and parts of acts conflicting herewith are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved December 6, 1867.]

AN ACT concerning Jurors.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Nov. 29, 1867.

SECTION 1. The county commissioners of any county in which a term of the district court is or may be held, shall, at least twenty days prior to the commencement of said term of court, select the names of one hundred persons lawfully qualified to serve as jurors, from the county assessor's books of the county, provided that number of names are contained in such assessor's book; and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited the county commissioners shall alternately draw the names of eighteen persons, who shall be summoned as trial jurors for the next ensuing term of such district court.

County commissioners to select.

SEC. 2. The list of names so drawn and certified to by the clerks of the county commissioners as selected by them, shall thereupon be delivered to the clerk of the court from [for] which such jury may be drawn. The clerk, upon the receipt of the same, shall immediately issue a venire directed to the sheriff of the county, commanding him to summon the persons so named as trial jurors for such term of court; and the sheriff shall summon such named persons at least five days prior to the commencing of such term of court.

To be summoned five days before commencement of term.

SEC. 3. The venire as provided for in section two of this act shall be returned to the clerk of such court by the sheriff aforesaid at least two days before the commencement of such term of court, and such

HeinOnline -- 1867 69 1867

1868 4th Regular.pdf

venire after its return shall be subject to the inspection of any officer or attorney of the court.

Key of box to be kept by clerk of court.

SEC. 4. The box containing the residue of the names of the jury list as aforesaid, shall, after such drawing, be locked up and the key deposited with the clerk of the court for which the jury is summoned and by him safely kept for future use by the aforesaid officer or as further provided in this act.

SEC. 5. When at any time during a term of the court it shall become necessary to summon other jurors than as hereinbefore provided for, the clerk shall, in open court, under the direction of the judge thereof, from such box draw a sufficient number of names to constitute additional trial jurors during such term of court: Provided, in case any such jurors so drawn reside at a great distance from the place where the court is held, the court may in its discretion dispense with summoning such juror and order another to be drawn instead thereof; and the clerk shall issue a venire, directed to the sheriff, for the summoning of such person as trial juror, and the sheriff shall proceed forthwith to summon the same as such trial juror, and with all possible diligence make return with his proceeding thereon.

SEC. 6. It shall be the duty of the board of county commissioners of the county, at least twenty days prior to the assembling of a court authorized by law to inquire into public affairs by the intervention of a grand jury, to select the names of sixteen persons eligible to serve as jurors, and upon a venire being issued by the clerk of such court, the sheriff shall, at least five days prior to the meeting of the court, summon said persons to appear on the first day of the next term, and from such panel the court shall select twelve persons who shall constitute such grand jury.

SEC. 7. When, from any cause, on the meeting of, or during the term of a court authorized by law to inquire into public offenses by the intervention of a grand jury, and a grand jury is wanted and there is not a sufficient number of jurors present, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand or trial jury as the case may be, it shall be lawful for such judge and sheriff to prepare a list of the names of a sufficient number of persons competent to serve as trial or grand jurors, and deposit such names in a box, and at any time during the term of the court when a juror shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section five of this act.

SEC. 8. Any white male person of lawful age who is a citizen of the United States, a tax payer and a bona fide resident of the county shall be competent to serve as a grand or trial juror.

Persons exempt.

SEC. 9. The following persons shall be exempted from serving as grand or trial jurors, viz: All priests or ministers of the Gospel, attorneys and counsellors at law, practicing physicians, all county, township, or territorial officers, editors and regularly enrolled firemen, in active service, not exceeding sixty-five in number to each company, and all idiots and insane persons.

HeinOnline -- 1867 70 1867

SEC. 10. Any person summoned as aforesaid to serve as a juror, who shall fail to attend unless excused by the court, shall be fined in any sum not exceeding fifty dollars, at the discretion of the court, and be imprisoned in the county jail until such fine is paid.

SEC. 11. This act to take effect and be in force from and after its passage.

[Approved November 29, 1867.]

AN ACT to amend an act entitled, "An Act relating to the discovery of gold and silver quartz leads, lodes or ledges, and of the manner of their location," approved December 26, 1864.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 4, 1867.

SECTION 1. That section six of said act be so amended [as] to read as follows: Notice of the discovery or pre-emption of any lead, lode or ledge shall be filed for record in the county recorder's office of the county in which the same may be situated, within fifteen days from the date of discovery or pre-emption, and there shall be an oath taken before some person authorized to administer oaths in the county wherein said lead, lode or ledge is located, that the claimant or claimants are each or all of them bona fide residents of the Territory of Montana; and there shall be deposited in the office of the recorder of the county where said lead, lode or ledge is located, either by the discoverer or some pre-emptor on said lead, lode or ladge, a specimen of the quartz ore or mineral extracted or taken from said lead, lode or ledge, which said specimen shall be properly labelled by the recorder and preserved in his office.

To be recorded within fifteen days from time of discovery.

Oath to be taken.

SEC. 2. That in any cases heretofore existing whereby any person or persons or discoverer have made oath before any officer authorized to administer oaths, in relation to the bona fide residents of claimants, shall be deemed valid, provided it shall not interfere with any contested right of occupancy now existing.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved December 4, 1867.]

1868 4th Regular.pdf

AN ACT creating certain Offices in the Territory of Montana, declaring to whom resignations shall be made, when the office shall be deemed vacant and the manner of filling vacancies.

Nov. 16, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Officers to be elected.

SEC. 1. There shall be elected or appointed in the Territory of Montana the following officers, to-wit: First, One Delegate to Congress. Second, Members of the Council of the Legislative Assembly. Third, Members of the House of the Legislative Assembly. Fourth, One Territorial Treasurer. Fifth, One Territorial Auditor who shall be ex-officio Librarian. Sixth, One Superintendent of Public Instruction. Seventh, One District Attorney for each Judicial district.

Delegate to Congress every two years

SEC. 2. The Delegate to Congress shall be elected by the qualified voters every two years. Members of the Council and House of Representatives shall be elected by the qualified voters of their respective districts.

SEC. 3. The Territorial Treasurer, Territorial Auditor, and Superintendent of Public Instruction shall be elected by the qualified voters of the Territory, and be commissioned by the Governor, and shall hold their office for two years, and until their successors are elected and qualified.

SEC. 4. The Treasurer, Auditor, and Superintendent shall be elected by the Legislative Assembly, as soon as practicable after the passage and approval of this act, in joint convention assembled, to be commissioned by the Governor, who shall hold their office until the general election in the year A. D. 1869, when they shall be elected according to the provisions of section three of this act.

District attorneys every two years.

SEC. 5. The District Attorneys shall be elected by the qualified voters of their respective districts at the general election in the year A. D. 1869, and every two years thereafter. Provided, That the persons in the respective "judicial districts" of this Territory who received a majority of the legal votes cast in their respective districts for the office of District Attorney at the general election held therein on the first Monday of September, A. D. 1867, are hereby declared the District Attorneys of their respective districts and shall hold their offices until the general election in the year A. D. 1869, and until their successors are elected and qualified.

Resignations made to Governor.

SEC. 6. Resignations shall be made by Territorial officers, district officers, and county commissioners to the Governor. County officers, except county commissioners, to the county commissioners in their respective counties.

SEC. 7. Every office shall become vacant upon the happening of

HeinOnline -- 1867 72 1867

1868 4th Regular.pdf

either of the following events before the expiration of the term of such office: First, The death of the incumbent. Second, His resignation. Third. His removal by law. Fourth, His ceasing to be a citizen of the Territory, district, county, or precinct for which he shall have been elected or appointed, within which the duties of his office are to be discharged. Fifth, Conviction of any infamous crime or any offence involving his official oath. Sixth, Refusal or neglect to take his oath of office, or to give or renew his official bonds within the time prescribed by law. Seventh, The decision of a competent tribunal declaring void his election or appointment. Offices made vacant, when

SEC. 8. The Governor is hereby authorized to declare vacant the office of every officer required by law to execute an official bond, whenever judgment shall be obtained against such officer for a breach of the conditions of such bond. When Governor to declare offices vacant.

SEC. 9. Whenever a vacancy shall occur at any time in the office of Territorial Treasurer, Auditor, Superintendent of Public Instruction, District Attorney of any district or of County Commissioners in any county, the Governor shall appoint some suitable person to perform the duties of such office, who shall hold the same until the next general election. When Governor to appoint and whom.

SEC. 10. Whenever any vacancy shall occur in any county or precinct office, except county commissioners, the county commissioners of the county where such vacancy occurs, shall appoint some suitable person to perform the duties thereof, until the next general election. Who to appoint county officers.

SEC. 11. Every person appointed in pursuance of the last two sections of this act shall take the oath and file a bond as prescribed by law, and faithfully perform the duties of their respective offices until their successors are elected and qualified. Persons appointed to take an oath and file a bond.

SEC. 12. This act to take effect and be in force from and after its passage and approval.

[Approved November 16, 1867.]

AN ACT for the better observance of the Lord's Day.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 10, 1867.

SEC. 1. Hereafter it shall be unlawful for any person or persons to keep open any play-house, theatre, dance house, hurdy-gurdy

HeinOnline -- 1867 73 1867

1868 4th Regular.pdf

house, prize ring, or race grounds on the first day of the week, commonly called the Lord's Day.

SEC. 2. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards, on the first day of the week, commonly called the Lord's Day.

SEC. 3. If any person or persons shall violate the provisions of this act, [they] shall be deemed guilty of a misdemeanor and upon conviction thereof, before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail, not less than one nor more than thirty days, for such offence, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

SEC. 4. Justices' of the Peace shall have jurisdiction in all cases arising under the provisions of this act.

SEC. 5. All fines collected under this act, shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved December 10, 1867.]

AN ACT to amend an Act entitled, "An Act concerning Crimes and Punishments," duly passed by the First Legislative Assembly of the Territory of Montana.

Dec. 3, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Section 147 of an act entitled, "An Act concerning Crimes and punishments," duly passed by the first Legislative Assembly of the Territory of Montana, be, and is hereby amended so as to read as follows, to-wit:

SEC. 147. Every person who shall wilfully and maliciously cut, break, injure, or destroy any bridge, mill, dam, canal, flume, acqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, agricultural or other useful and lawful purpose, or any embankment necessary to the

HeinOnline -- 1867 74 1867

same, or either of them, or shall wilfully or maliciously make or cause to be made, any aperture in such dam, canal or flume, acqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one hundred dollars, or imprisoned in the county jail, for not more than six months, or both such fine and imprisonment.

SEC. 2. All acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 3. This act to take effect from and after its passage and approval by the Governor.

[Approved December 3d, 1867.]

AN ACT to amend an act concerning Crimes and Punishments.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 7, 1867.

SECTION 1. That Section thirty-nine of said act be so amended as to read as follows:

That any person in this Territory having, carrying, or procuring from another person, any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of one or more persons, draw or exhibit any of said deadly weapons in a rude, angry or threatening manner, not in necessary self-defence, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending, upon conviction thereof, in any criminal court in any county in this Territory, shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, or imprisoned in the county jail not less than three nor more than six months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases, and all fines and forfeitures arising under the provisions of this act, shall be paid into the county treasury for school purposes; provided, nevertheless, that no sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be held to answer under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil and peace officers in this

The improper use of deadly weapons.

How punished.

Fines to be used for school purposes.

Officers in discharge of duty not liable.

Military and civil officers to give information.

Territory to be vigilant in carrying the provisions of this act into full force and effect, as will also all grand jurors to inquire into and make presentment of each and every offence under this act which shall come under or within their knowledge. It shall be and is hereby made the duty of all Judges in this Territory to give this act in charge to the grand juries at each term of their respective courts, and also to all trial juries empannelled for the trial of any of the offences hereinbefore mentioned in this act.

Judges to charge grand juries.

SEC. 2. That sections forty-five, forty-six and forty-seven of said act be so amended as to read as follows:

Assault defined.

SEC. 3. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another, and every person convicted thereof, shall be fined in a sum not less than five, nor more than fifty dollars.

Offences punished with imprisonment

SEC. 4. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the Territorial prison, for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and maglignant heart, shall subject the offender to imprisonment in the Territorial prison, not less than one nor more than two years, or to a fine not less than five hundred, nor more than one thousand dollars, or to both such fine and imprisonment, at the discretion of the court.

Term of imprisonment, amount of fine.

Assault and battery defined.

SEC. 5. Assault and Battery is the unlawful beating of another, and a person convicted thereof, shall be fined in a sum not less than ten nor more than one hundred dollars and imprisonment in the county jail, not less than one, nor more than six months, or both such fine and imprisonment, at the discretion of the court.

SEC. 6. This act to be in force and take effect from and after its approval by the Governor.

[Approved December 7, 1867.]

AN ACT supplementary to an act entitled, "An Act amendatory of an act entitled, an act regulating the holding of Elections in Montana Territory," approved Nov. 22, 1867.

Dec. 10, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That nothing in an act entitled, an act to amend an act

entitled, "An act regulating the holding of elections in Montana Territory," approved Nov. 22, 1867, shall not be so construed as to conflict with or abridge the rights of any person or persons enfranchised by a law of Congress, approved Jan. 24, 1867.

SEC. 2. All acts and parts of acts inconsistent with this act, are hereby repealed.

SEC. 3. This act to take effect and be in full force from and after its passage.

[Approved December 10, 1867.]

AN ACT Supplementary to an Act in relation to Notaries Public.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 23, 1867

SEC. 1. That all Notaries Public who may hereafter be appointed by the Governor, as prescribed by law, shall, in addition to the requirements now made by statute, have their commissions recorded by the recorder in the county where such notary may reside, and shall file with the recorder of the county a bond of one thousand dollars to the people of the United States of the Territory of Montana for the faithful performance of the duties of said office.

Notaries to record commission and file a bond of one thousand dollars with recorder.

SEC. 2. All notaries public who now hold commissions as such, shall, on or before the first day of May, A. D. 1868, have their commissions recorded, and file a bond as prescribed in the preceding section. Non-compliance with the requirements herein specified shall work a forfeiture of any and all such commissions.

SEC. 3. The bond above specified shall be executed by the principal, with two or more sureties, to be approved by the judge of the probate court in the county where such notary may reside; each of said sureties shall swear that he is a resident of the Territory of Montana, and is worth the amount specified in said bond, over and above all debts and liabilities and property exempt from execution.

SEC. 4. Any person or persons who shall have suffered damage by any mis-feasance or mal-feasance of office by any notary public, shall recover such damages as he, she or they may have sustained, by a civil action upon such officers' bond against the parties to such bond, in any court of competent jurisdiction.

SEC. 5. This act shall take effect and be in force from and after its passage and approval by the Governor.

[Approved November 23, 1867.]

AN ACT providing for Storage and Commission Merchants to dispose of goods, wares, merchandise and machinery, for storage on the same and for money advanced as freight thereon.

Nov. 23, 1867. *Be it enacted by the Legislative Assembly of the Territory of Montana:*

SEC. 1. That any storage or commission merchant receiving goods, wares, merchandise or machinery from any party for storage, after keeping the same in store for the term of ninety days, may, in default of the payment of the storage or freight money on such goods, wares, merchandise or machinery, advertise and sell the same at public auction, to the highest bidder, for cash in hand, first giving notice of the time, terms and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored; said notice shall be published at least thirty days previous to the day of sale, and shall specify the amount due on the property to be sold: provided, that when a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such goods, wares, merchandise or machinery are stored, then notice may be given in the nearest newspaper published thereto in some other county in Montana: Provided, that no more of such goods, wares, merchandise or machinery shall be sold than is necessary to pay the charges due, together with the costs, and as shall accrue every six months thereafter.

SEC. 2. That all sales under this act shall vest the title to all goods, wares, merchandise or machinery disposed of under the provisions of this act, in the purchase [purchaser] thereof.

SEC. 3. That after the expense of sale and publication of notice of sale, the storage or commission merchant shall be authorized, out of the proceeds arising from the sale of any goods, wares, merchandise or machinery disposed of under the provisions of this act, to retain the amount due him for storage or freight money advanced on any such goods, wares, merchandise or machinery, and the excess, if any, to be paid over to the party owning the goods and entitled to the proceeds thereof.

SEC. 4. This act to take effect and be in force from and after its passage and approval.

[Approved November 23, 1867.]

HeinOnline -- 1867 78 1867

AN ACT to provide for marks instead of signatures.

Be it enacted by the legislative Assembly of the Territory of Montana: Nov. 18, 1867.

SEC. 1. The signature of a party when required to a written instrument, shall be equally valid if the party cannot write: Provided the person make his mark, and the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name upon such instrument as a witness.

SEC. 2. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved November 18, 1867.]

AN ACT requiring the Clerks of the District Courts to give bonds.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 3, 1867.

SEC. 1. That the clerks of the Territorial District Courts and persons acting as clerks of the probate courts of this Territory, be and are hereby required to execute a bond to the people of the Territory of Montana, in the penal sum of five thousand dollars, and an additional amount if required by the judges of the respective courts, to be approved by the judges of their respective districts, conditional for the faithful performance of their duites as clerks of said courts, and that they will punctually pay over to the persons legally authorized to receive the same, all money that may come into their hands by virtue of said office.

SEC. 2. The bonds so executed by said clerks may be sued upon in the name of the Territory of Montana, in any court of competent jurisdiction, to the use of any person or persons aggrieved by any breach of the same.

SEC. 3. It shall be the duty of the several judges of the district courts in this Territory to appoint a clerk of said court in each county

where a district court is held, who shall procure a seal of said court, to be paid for by the county in which said court is to be held, and shall keep his office at the county seat of said county, together with all books, papers and records of said court.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved December 3, 1867.]

AN ACT to amend an Act entitled "An Act securing liens to mechanics and others," approved December 30, 1864.

Dec. 6, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Who shall be entitled to a lien.

SEC. 1. Every mechanic, builder, lumberman, artisan, workman, laborer or other person who shall do or perform any work or labor upon, or furnish any material, machinery or fixtures for any building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements upon land, or for repairing the same, upon complying with the provisions of this act, shall have for his work or labor done, or material, machinery or fixtures furnished, a lien upon such building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements, to secure the payment of such work or labor done, or material, machinery or fixtures furnished.

Lien to be filed with recorder within sixty days after work done or material furnished.

SEC. 2. That section six of said act be so amended as to read as follows: It shall be the duty of every [all] persons, except as has been provided for sub-contractors, who wish to avail himself [themselves] of the benefits of this act, to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvement upon land to be charged with the lien, is situated, and within sixty days after the things aforesaid shall have been furnished, or the work or labor done or performed, a just and true account of the demand due or owing to him, after allowing all credits and containing a correct description of the property to be charged with said lien, and verified by affidavit.

SEC. 3. All acts and parts of acts conflicting herewith are hereby repealed.

HeinOnline -- 1867 80 1867

SEC. 4. This act to take effect and be in force from and after its approval by the Governor.

[Approved December 6, 1867.]

AN ACT relating to the discovery and possessory right of all placer mines.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 1, 1867.

SEC. 1. That any person or persons who may hereafter discover any gulch, bank, bar, or hill claim, or claims, shall be entitled to one claim by discovery right and one claim each by pre-emption.

SEC. 2. That all gulch claims shall be two hundred feet up and down said gulch and extending two hundred feet upon each side, from the center of said gulch. Defining placer mines.

SEC. 3. That all bank, bar, or hill claims shall be two hundred feet square.

SEC. 4. That a gulch, with its banks, bars and hill sides, shall constitute but one district.

SEC. 5. That all claims owned or claimed to be owned by any person or persons shall be represented by actual working of said claim or claims at least two days in each week, except at any time when such claim cannot be practically worked, which shall be determined by two-thirds of the claim holders of the district.

SEC. 6. That there shall be, in each and every district, elected one recorder for such district, whose duty it shall be to record such claims in a book of record, to be at the inspection of all persons, and to give to any person or persons a certificate of such pre-emption, and for such record said recorder shall be entitled to a fee of one dollar. Recorder.

SEC. 7. And that before any record shall be made under the provisions of this act there shall be placed at the extremity of each claim or discovery claim, one stake; said stakes to be at least two inches in diameter, containing the name of the person or persons preempting such claim, and that said person or persons shall have at least fifteen days time from staking of said claim to record such claim. Staking and recording.

SEC. 8. That nothing contained in this act be so construed as to prohibit any person or persons from holding one or more claims by purchase.

SEC. 9. That any person or persons holding one or more claims by pre-emption or purchase, and working upon one, or digging drain or other ditch for said claim, shall be considered an actual representation.

Miners to make local laws.

SEC. 10. That nothing in this act shall be so construed [as] to prohibit any body of miners to the number of thirty, from making any and all local laws which they may wish, upon a call of the miners of any district or upon the posting of a notice of such in three public places, giving at least three days notice, specifying the time and place of holding of such meeting, provided that said laws shall not conflict with vested rights under authority of this act, acquired prior to said meeting.

SEC. 11. That this act take effect from and after its passage and approval.

[Approved December 11, 1867.]

AN ACT supplementary to "An Act for the protection of roads."

Dec. 6, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That if any person, mining, ditch or milling company, shall, by virtue of any charter or law granted or made for mining, milling, irrigating or other purposes, or by virtue of any established custom, cut, dig or excavate, or causse to be cut, dug or excavated, any ditch across any wagon or other road, the said person, company or corporation shall bridge or cause the same to be bridged in a strong, safe and substantial manner, to be accepted by the county commissioners of the county in which said road is located.

SEC. 2. Any person, company or corporation violating the first section of this act, shall be liable to a fine not exceeding one hundred dollars, nor less than twenty-five dollars, to be recovered by action of debt in any court having competent jurisdiction in this Territory.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 6, 1867.]

HeinOnline -- 1867 82 1867

AN ACT requiring certain officers to surrender the books of their office, and the Treasurer, Auditor and Superintendent to file an oath with bonds, &c.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 10, 1867.

SEC. 1. That the Territorial Auditor, Treasurer and Superintendent of Public Instruction, before entering upon the duties of their respective offices, shall be required to take an oath to support the Constitution of the United States, the organic act of Montana Territory, and to faithfully discharge the duties of their respective offices. To take oath of office.

SEC. 2. That the superintendent of public instruction shall be required to give bond, with two or more sufficient sureties, in the sum of twenty thousand dollars, to be approved of by the Secretary of the Territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the Secretary or acting Secretary of the Territory, or by the Legislative Assembly thereof. To give bond.

SEC. 3. Whenever the Territorial auditor, treasurer, and superintendent of public instruction shall have filed their bond and taken the oath according to law, and shall have received their respective commissions, it shall be the duty and it is hereby required that their predecessors in office shall, without unnecessary delay, deliver over to their successors thus qualified all books, papers, accounts and property belonging to said office, and in case of refusal shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of competent jurisdiction, be fined in a sum not less than five hundred nor more than two thousand dollars, and be imprisoned in the county jail for the term of six months. Predecessors to deliver books, papers, &c. Refusal to be deemed misdemeanor.

SEC. 4. This act shall take effect and be in force from and after its passage.

[Approved December 10, 1867.]

AN ACT in relation to liens by attachments and judgment.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 13, 1867.

SEC. 1. That from and after the passage of this act, all liens by

First lien levied shall be the first satisfied.

attachment shall accrue at the time of the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which they are levied; and said liens shall not be affected by any subsequent attachment or by any judgment obtained subsequent thereto: Provided, that if two or more attachments shall be levied upon the same property at the same time, they shall share pro rata in the proceeds of said property; but in all cases the first attachment levied shall be the first satisfied: Provided further, that the first writ placed in the hands of the officer shall be levied first.

To become lien from date of judgment upon all real estate and continue two years.

SEC. 2. That section one hundred and eighty of an act entitled "An act to regulate proceedings in civil cases in the courts of justice of the Territory of Montana," be so amended as to read as follows: The judgment shall, from the date of its rendition, become a lien upon all real property and improvements thereon, and fixtures appertaining to the same, and mining claims, the judgment debtor, not exempt from execution in the county in which the judgment is rendered, owned by him at the time, or in which he has any interest or any that he may afterwards acquire, until said lien expires; the lien shall continue for two years, unless the judgment is previously satisfied.

Transcripts of justices to be liens from date of filing with recorder.

SEC. 3. A transcript of any judgment rendered by any justice of the peace, duly certified by said justice, may be filed with the recorder of the county in which said judgment shall have been rendered, and from the time of the filing of the judgment, shall become a lien upon all of the property of the judgment debtor except personal property and property exempt from execution, in such county, in the same manner and to the same extent as if said judgment had been originally rendered in a court of record, said lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 4. All acts and parts of acts conflicting herewith, are hereby repealed.

SEC. 5. This act to take effect and be in force from and after its passage and approval.

[Approved December 13, 1867.]

AN ACT to provide for the laying out and establishing a Territorial Road from Bozeman City, in Gallatin County, to Helena City, in Edgerton County.

Dec. 13, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That there shall be laid out a Territorial Road from

Bozeman City, in Gallatin county, to the city of Helena, in Edgerton county; that the said road shall commence at said Bozeman City, thence to Nelson's crossing on West Gallatin river; thence to the Three Forks of the Missouri river; thence to the city of Raidersburg; thence to Springville City; thence to the city of Helena. Provided that the Territory of Montana shall not be chargeable with any of the expenses of the laying out and establishing or keeping the same in repair.

Territorial road from Bozeman to Helena.

Territory not to be chargeable.

SEC. 2. That David Short and James B. Campbell be and are hereby appointed commissioners to lay out and establish said road.

SEC. 3. That for the purpose of carrying out the provisions of this act it shall be the duty of the county commissioners of the counties through which the road passes, to collect a special tax pro rata in the said counties to defray the expenses of laying out, establishing, marking and surveying said road.

Counties to pay pro rata tax.

SEC. 4. That the said commissioners shall, on or before the first day of May, 1868, file a bond payable to the people of the Territory of Montana, in the sum of two thousand dollars, with good and sufficient surety, and to be approved by and filed with the Recorder of the county of Jefferson. The condition of the said bond shall be for the faithful performance of the trusts conferred by this act.

SEC. 5. The said commissioners shall, on or before the first day of May, A. D. 1868, or so soon as they shall file their bond as provided in section four of this act, proceed to locate and establish the road, making the width sixty-six feet, and shall make out a correct plat of the same, defining the width, length and the distance from point to point, as provided in section one of this act, and file the same for record in the Recorder's office in the county of Jefferson.

SEC. 6. The provisions of this act shall in no way interfere with any person or persons who may have acquired or [are] now enjoying vested rights to any bridge, ferry or other property along said road.

SEC. 7. This act to take effect and be in force from and after its passage and approval.

[Approved, Dec. 13, 1867.]

AN ACT authorizing the County Commissioners of Madison and Jefferson Counties to levy and collect a special tax for the purpose of erecting County Buildings.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 13, 1867.

SEC. 1. The county commissioners of Madison and Jefferson

Madison and Jefferson counties authorized to levy tax for public buildings.

counties are hereby authorized, as soon after the passage of this act as they may deem fit and expedient, to contract for the erection of a court house and such other county buildings as the public interests of said county may demand.

Amount of tax to be levied.

SEC. 2. That for the purpose of providing a fund to pay for the erection of the public buildings authorized by this act, the county commissioners of Madison and Jefferson counties are hereby authorized and empowered to levy and collect a special tax on all the taxable property in said counties, in an amount sufficient only to meet the necessary expenses to be incurred in carrying out the provisions of this act.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved, Dec. 13, 1867.]

AN ACT in relation to the election of County Officers within the several counties of the Territory of Montana.

Dec. 10, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. Every person elected to any office within the several counties in this Territory at the general election held on the first Monday of September, eighteen hundred and sixty-seven, and having received a certificate of election and filed a bond as required by law and is now in the discharge of his official duty, shall be deemed duly elected and shall be entitled to hold said office for the time prescribed by law.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved, December 10, 1867.]

AN ACT defining the Council and Representative Districts of the Territory of Montana, and apportioning the members of the Legislative Assembly thereof.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 13, 1867.

SECTION 1. That the next session of the Legislative Assembly of the Territory of Montana shall convene at the seat of government of said Territory on the first Monday of December, one thousand eight hundred and sixty-eight, at noon of that day, and annually thereafter.

SEC. 2. The Legislative Assembly of the Territory shall, until the same be changed by law, consist of thirteen members of the Council, and twenty-four members of the House of Representatives, to be apportioned among the several Council and Representative districts as hereinafter provided.

Thirteen members of the Council and twenty-four members of the House.

SEC. 3. That the Territory of Montana is hereby divided into four Council and nine Representative districts, as follows: First Council district, consisting of Madison and Beaverhead counties, shall be entitled to three members of the Council; second Council district, consisting of Deer Lodge and Missoula counties, shall be entitled to four members of the Council; third Council district, consisting of Edgerton and Jefferson counties, shall be entitled to four members of the Council; fourth Council district, consisting of Choteau, Meagher, Gallatin and Big Horn counties, shall be entitled to two members of the Council; first Representative district, Madison county for members of the House; second Representative district, Deer Lodge county, five members of the House; third Representative district, Edgerton county, five members of the House; fourth Representative district, Beaverhead county, two members of the House; fifth Representative district, Missoula county, one member of the House; sixth Representative district; Choteau county, one member of the House; seventh Representative district, Meagher county, two members of the House; eighth Representative district, Jefferson county, two members of the House; ninth Representative district, Gallatin and Big Horn counties, two members of the House.

SEC. 4. At the general election in the year eighteen hundred and sixty-eight, there shall be elected six members of the Council, one from the first Council district, two from the second Council district, two from the third Council district, and one from the fourth Council district. And at the general election in the year eighteen hundred and sixty-nine, there shall be chosen seven members of the Council, from the first, second and third districts, two each, and from the fourth district, one; and annually thereafter, when a vacancy shall occur in the office of Councilman from either of said districts, either by death, resignation or expiration of term of office, an

Six members of Council to be re-elected in 1868.

1868 4th Regular.pdf

election shall be held to fill such vacancy, so as to meet the requirements of this act.

SEC. 5. The person or persons having the highest number of votes in each district for member or members of the Council and House of Representatives, shall be declared duly elected and shall be entitled to his certificate of election.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved, Dec. 13, 1867.]

AN ACT to prevent the sale of intoxicating liquors to Indians in Montana Territory.

Nov. 16, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. No person shall directly or indirectly sell, barter or give intoxicating liquors in any quantity to any Indian in this Territory.

What to be termed intoxicating liquors.

SEC. 2. The term intoxicating liquor as used in this act shall be construed to mean fermented, vinous and spirituous liquors, or any composition of which fermented, vinous or spirituous liquor is a part.

Punishment of offenders.

SEC. 3. Any person convicted of a violation of section one of this act shall be fined in a sum not less than one hundred nor more than five hundred dollars, and may be confined at hard labor in the territorial prison for any period not to exceed three years, or by both such fine and imprisonment.

By whom to be arrested

Form of proceeding.

SEC. 4. Every civil officer and every officer of incorporated cities and towns, having a knowledge of the violation of the preceding provisions of this act, shall give information thereof to the Grand Jury, or if no Grand Jury for the county in which said offense is committed be in session, shall arrest any person or persons guilty of such violation, and take such person or persons before a justice of the peace for the county in which such offense was committed, and upon complaint made by such civil officer or other person, on oath in writing, it shall be the duty of such justice of the peace to proceed with the person or persons accused in like manner as in other criminal cases, and shall certify the names of the witnesses by whom such violations can be proved to the court having the jurisdiction.

HeinOnline -- 1867 88 1867

1868 4th Regular.pdf

SEC. 5. The District Judge shall give this act in charge to the Grand Jury at each term of the district court. Judge to charge grand jury.

SEC. 6. The district or prosecuting attorney shall be required to see that proper proceedings are taken and proper process is issued, to collect all fines and costs from persons convicted under this act. Prosecuting attorney to collect fines and costs.

SEC. 7. This act to be in force from and after its passage.

[Approved, November 16, 1867.]

AN ACT to repeal section nine, ten and twenty-four of an act entitled, "An Act concerning Limitations."

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 4, 1867.

SEC. 1. That sections nine, ten and twenty-four of an act entitled, "An act concerning limitations," approved February 9, 1865, be, and the same are hereby repealed.

SEC. 2. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 4, 1867.]

AN ACT concerning Highways and to prevent obstructions thereof.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 19, 1867.

SECTION 1. All roads or highways laid out or now traveled in the various counties in the Territory of Montana are hereby declared public highways, excepting such roads and highways upon which franchises have heretofore been granted.

SEC. 2. Any person who shall hereafter fence up, or obstruct any such highways, having been notified of the same by any person or

HeinOnline -- 1867 89 1867

1868 4th Regular.pdf

persons aggrieved, or who shall within ten days after such notice, fail or refuse to remove any such obstructions, shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction, shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars, and be adjudged to pay all costs of prosecution.

SEC. 3. That all acts and parts of acts contravening this act are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage and approval.

[Approved November 19, 1867.]

AN ACT fixing the time of the meeting of the Legislative Assembly of the Territory of Montana.

Nov. 13, 1867 *Be it enacted by the Legislative Assembly of the Territory of Montana*:

SECTION 1. That the Legislative Assembly of the Territory of Montana shall hereafter convene at the territorial capital on the first Monday of December of each year, at twelve o'clock M., until otherwise provided by law.

SEC. 2. All acts and parts of acts contravening this is [are] hereby repealed.

SEC. 3. This act to take effect from and after its passage and approval.

[Approved November 13, 1867.]

AN ACT authorizing the County Clerks of the several Counties in this Territory to appoint deputies.

Dec. 9, 1867. *Be it enacted by the Legislative Assembly of the Territory of Montana*:

SECTION 1. The county clerks of the several counties are hereby authorized to appoint deputy recorders within their respective coun-

HeinOnline -- 1867 90 1867

1868 4th Regular.pdf

ties as they may deem necessary, who shall have the right to file preemption of quartz claims according to the laws of this Territory, as well as deeds of conveyance. Said filings made by said deputies shall be carefullly preserved and transmitted in due time to the office of the county recorder to be recorded by the recorder as provided by law. The said recorder and his sureties shall be responsible under his official undertaking for the acts of such deputies.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 9, 1867.]

AN ACT relating to fires and the protection of timber and grasses.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 4, 1867.

SECTION 1. That any person who shall wantonly or carelessly set fire to any timber or grasses, except for useful or necessary purposes, or who shall at any time make any camp fire, or shall light any fire for any purpose without taking sufficient steps to secure the same in spreading from the immediate locality where the same may be used while using the same, or shall fail in any instance to put out or extinguish every vestige of said fire or fires before leaving or abandoning the same, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than twenty-five nor more than five thousand dollars, in the discretion of the court, and in addition shall be imprisoned in the county jail or territorial prison for the term of not less than one nor more than five years, and shall be liable for all costs and damages accruing from said act.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved, December 4, 1867.]

HeinOnline -- 1867 91 1867

1868 4th Regular.pdf

AN ACT declaring what shall constitute a lawful fence.

Dec. 9, 1867. *Be it enacted by the Legislative Assembly of the Territory of Montana:*

Defining a legal fence.

SECTION 1. A fence shall be considered lawful when constructed of four or more strong poles or rails, the lower pole or rail to be not more than two feet from the ground. The above is intended to apply to what is known as a leaning fence; also all board and rail fences, well secured to good and substantial posts firmly set in the ground; also all worm fences and stone walls shall be considered lawful; provided, that all of the above named fences shall be not less that four and one-half feet high; and provided further, that any portion of an enclosure bordering or any stream more than four feet deep, swamp, bluff, ditch or wall, which shall be as difficult for stock to pass as the fence described in this section, may be used as a lawful fence.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved Decembed 9, 1867.]

AN ACT prohibiting the Territorial Auditor from issuing Warrants in favor of any person without express provisions of Law.

Dec. 7, 1867. *Be it enacted by the Legislative Assembly of the Territory of Montana:*

SECTION 1. The Territorial Auditor of this Territory is hereby forbidden to issue any warrant in favor of any person, drawing upon the territorial treasury for any sum, unless he is authorized by law expressly, in which the name of the party shall be specified, the nature of the service performed, and the amount specified for the performance of such service.

SEC. 2. That in case the Territorial Auditor shall issue any warrant in favor of any person contrary to the provisions of the preceding section of this act, [he] shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction

HeinOnline -- 1867 92 1867

1868 4th Regular.pdf

in this Territory, shall be fined in a sum not less than one thousand dollars nor more than five thousand dollars, to be collected as in other cases provided by law, and shall forfeit all rights to hold or enjoy office in this Territory.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 7, 1867.]

AN ACT locating the Penitentiary of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 19, 1867.

SECTION 1. That the penitentiary authorized to be located by the Legislative Assembly of the Territory of Montana, by the act of Congress, approved January twenty-second, A. D. 1867, is hereby located, in conformity with the said act, at the city of Deer Lodge, in the county of Deer Lodge, Montana Territory.

SEC. 2. That His Excellency Green Clay Smith, Governor of Montana, is hereby directed, at an early day after the passage of this act, to inform the Secretary of the Interior of the compliance of the Legislative Assembly with the act of Congress mentioned in section first of this act, locating the said penitentiary at the place designated in this act.

SEC. 3. This act to take effect from and after its passage and approval.

[Approved December 19, 1867.]

AN ACT to amend an act concerning weights and measures, approved January twenty-fourth, eighteen hundred and sixty-five.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 2, 1867.

SEC. 1. That the fourth section of the act to which this is amend-

HeinOnline -- 1867 93 1867

1868 4th Regular.pdf

atory, be, and the same is hereby, amended as follows. It shall be the duty of the board of county commissioners of the several counties of this Territory to provide and adopt a temporary standard of weights and measures until such time as they shall be notified of the arrival and acceptance of the standard to be furnished by the government of the United States to the treasurer as provided in said section.

SEC. 2. All parts of the act to which this is amendatory, and inconsistent with the provisions hereof, shall remain suspended in their effect and operation until such time as the standards of weights and measures therein provided for shall be furnished to the treasurer of this Territory, and until that time this act shall remain in full force and effect, and no longer.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 2, 1867.]

AN ACT to provide for the support and care of Territorial prisoners in any of the county jails of this Territory.

Dec. 10, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

In custody and under control of whom.

SEC. 1. All Territorial prisoners confined in any of the county jails of this Territory shall be in the custody and under the control of the sheriff or his deputy of such county wherein such prisoner or prisoners may be confined, and shall be a charge upon the Territory for such keeping.

SEC. 2. All persons who may be convicted of felony, and all persons who may be sentenced to imprisonment in the Territorial prison, shall be deemed Territorial prisoners, and none others.

County commissioners to audit expense of keeping.

SEC. 3. The county commissioners of any county in this Territory wherein Territorial prisoners may be confined, shall, every three months, audit and allow to such sheriff or other officer having charge of such prisoners, the amount due to such officers for the care and keeping of said Territorial prisoners, and the amount thus allowed shall be certified by the clerk of said board of commissioners to the Territorial auditor, whereupon the Territorial auditor shall draw his warrant on the Territorial treasurer in favor of such sheriff or officer

HeinOnline -- 1867 94 1867

for said amount, and in no other manner shall any money be drawn from the Territorial treasury for the keeping of such prisoners than as provided in this act.

SEC. 4. This act shall take effect and be in force from and after its passage.

[Approved December 10, 1867.]

AN ACT requiring criminals to perform labor.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 13, 1867.

Convicts sentenced to imprisonment compelled to labor during term of service.

SEC. 1. Whenever any person or persons in this Territory shall have been sentenced [to] imprisonment for any term for the commission of any crime, misdemeanor or felony against the laws of this Territory, or in violation of any city ordinance of any incorporated city in this Territory, by a judgment of any court or judge thereof, justice of the peace, or municipal court, or shall have been committed to jail for any term in default of the payment of any fine or penalty imposed by any such courts or justices, the person or persons so imprisoned may be required and compelled to work and perform labor during his or their respective terms of imprisonment.

Such labor to be done under direction of county commissioners.

SEC. 2. The county commissioners of any county of this Territory are hereby authorized and empowered to enforce the provisions of this act in their respective counties, and to employ any criminal or criminals committed to the jails of their respective counties, as referred to in the preceding section, in the performance of any work or labor, or in any occupation or trade, as to them shall seem proper, such work to be carried on under the superintendence of any sheriff, deputy sheriff or constable of such county as said commissioners may designate, the benefits, profits and results of such work and labor to be enjoyed and used are to accrue to the county in which such criminal or criminals may be confined.

Incorporated authorities to work criminals.

SEC. 3. The city council or authorities of any incorporated city in this Territory are also authorized to work or employ any prisoner or prisoners committed to jail for the violation of any city ordinance of such city, or in default of the payment of any fine or penalty imposed for the violation of any ordinance of such city, such labor to be performed under the supervision of any marshal, constable or police officer of such city, as the authorities may designate, the profits and results of such labor to accrue to such city. All incorporated

Profits of labor to city fund.

1868 4th Regular.pdf

Officers to prevent escape of prisoners.

cities and towns of this Territory are hereby granted the full and complete privileges of this act.

SEC. 4. The officers herein mentioned are fully authorized and empowered to secure and fasten with chains or other device any prisoner or prisoners in the performance of any such labor, so as to prevent the escape of such prisoner or prisoners.

Unruly prisoners to be placed in solitary confinement and fed upon bread and water.

SEC. 5. Any person or persons who may be put to labor or assigned labor to perform under the provisions of this act, who shall be refractory and unruly, who shall refuse to perform the task assigned, who shall wilfully injure or destroy any material given to be worked upon, or any tool, implement or instrument whatever, with which to perform such labor, or who shall perform such task or tasks negligently, may be placed in solitary confinement and be fed upon bread and water, or subjected to such like punishment by the officers having the same in charge, until the said prisoner or prisoners shall agree to do and perform the labor assigned in a satisfactory manner, and with due diligence and care.

SEC. 6. This act to take effect and be in force from and after its passage and approval.

[Approved November 13, 1867.]

AN ACT amendatory of an act entitled "An Act regulating the holding of elections in Montana Territory," approved January 17, 1865.

Nov. 22, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Qualification of voters.

SEC. 1. That section one of said act be so amended as to read as follows: That all white male citizens of the United States, and those who have declared their intention to become citizens, above the age of twenty-one years, shall be entitled to vote at any election for delegate to congress and for Territorial, county and precinct officers, provided they shall have resided in the Territory twenty days, and in the county ten days, where they offer to vote, next preceding the day of election.

Duty of the board of county commissioners defined.

SEC. 2. That section twenty-eight of said act be so amended to read as follows: After the tenth day after the close of any election, or sooner if all the returns be received, the board of county commissioners, or any two members of said board, taking to their assistance a justice of the peace of the county, or any county officer, shall proceed to open the returns and make abstracts of the votes. Such ab-

HeinOnline -- 1867 96 1867

1868 4th Regular.pdf

stracts of votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on another sheet, and the abstracts of votes for Territorial and district officers shall be on another sheet, and the abstracts of votes for county and township officers shall be on another sheet, and it shall be the duty of the clerk of said board of county commissioners immediately to make up a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers respectively, and to deliver such certificate to the persons entitled to it, unless making application to the clerk at his office: Provided, that when a tie shall exist between two or more persons for the council or house of representatives, the clerk of the board of county commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice, and it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners shall order the compensation aforesaid, to be paid out of the county treasury.

SEC. 3. That if any judge or clerk of any election, or any person in this Territory, shall hereafter make any false election returns to any officer of the Territory authorized to receive election returns, with the intent to practice a fraud, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred dollars nor more than five thousand dollars, and imprisoned in the Territorial prison not less than one nor more than five years, or both such imprisonment and fine in the discretion of the court, and shall forever thereafter be disqualified to hold any office of honor or profit within the Territory of Montana. Punishment of judges or clerks of election for false returns.

SEC. 4. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

SEC. 5. This act to be in force and take effect from and after its passage.

[Approved November 22, 1867.]

AN ACT to amend an act entitled "An act to provide increased compensation to the officers in this Territory," approved January 24, 1865.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 6, 1867.

SEC. 1. That section one of an act entitled "An Act to provide

1868 4th Regular.pdf

Extra compensation Governor.

increased compensation to the officers of this Territory," approved January 24, 1865; be so amended as to read as follows: The salary of the governor of this territory, in addition to the sum already provided by the United States government, shall be and is hereby increased to the sum of twenty-five hundred dollars per annum, payable quarterly, out of any monies in the Territorial treasury not otherwise appropriated: Provided, that in no case shall such additional salary be paid to the governor for any quarter unless said governor shall have been in this Territory during the whole of said quarter.

SEC. 2. The Territorial auditor shall issue his warrant upon the Territorial treasurer for said salary or any portion thereof, as the same may become due, under the provisions of this act.

SEC. 3. That section three of said act entitled "An Act to provide increased compensation to officers in this Territory," be and the same is hereby repealed.

SEC. 4. That all that portion of said act referred to in the preceding section, providing for increased compensation to the justices of the supreme court of this Territory, be and the same is hereby repealed.

SEC. 5. That all acts and parts of acts conflicting herewith are hereby repealed.

SEC. 6. This act to take effect and be in force from and after its approval by the Governor.

[Approved December 6, 1867.]

HeinOnline -- 1867 98 1867

COUNTIES AND COUNTY BOUNDARIES.

AN ACT to divide the county of Gallatin.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Nov. 16, 1867.

SEC. 1. That the county of Gallatin be and the same is hereby divided by an imaginary line running east across said county, commencing in the middle of the channel of the Missouri river, opposite the mouth of Crow Creek, and that all that portion of said county lying north of said line and east of the Missouri river, be and the same is hereby created into a new county, which shall be called and hereafter known as Meagher county.

Meagher county.

SEC. 2. The line between the county of Meagher and Choteau shall commence in the middle of the main channel of the Missouri river, opposite the mouth of Deep Creek, and run due east to the eastern boundary of Gallatin county, as heretofore defined, and the county seat of Meagher county shall be located at Diamond City until the next general election; and the qualified voters of said county of Meagher shall, at the general election in the year eighteen hundred and sixty-eight, have power to change the said seat by voting for as many places as the voters may choose, and the place having or receiving the most votes shall be the county seat.

Line between Meagher and Choteau.

Diamond City, county seat of Meagher.

Vote for county seat in 1868.

SEC. 3. The Governor of this Territory is hereby authorized and empowered, and it is hereby made his duty, by and with the advice and consent of the Council, to appoint competent men to fill all the county offices, immediately after the passage of this act; and the persons so appointed shall qualify according to law, within ten days after the notice of their appointment, and shall discharge all the duties appertaining to their respective offices, until the general election in the year eighteen hundred and sixty-eight.

Governor to appoint officers until next election.

SEC. 4. That the official acts of all the officers heretofore appointed or elected to fill county, township, or other offices in and for the county of Meagher, by virtue of the provisions of an act creating the said county of Meagher, passed at the second session of the Legislative Assembly of the Territory of Montana, and approved March 26, 1866, shall be held as legal and binding, both in law and equity, as

Acts of officers heretofore appointed or elected confirmed.

1868 4th Regular.pdf

if said act of March had been held by the courts of the Territory and the Congress of the United States, valid and binding.

Acts of judiciary in said county confirmed.

SEC. 5. All the official acts of the clerk, and the judicial acts of the district court for the county of Meagher, done in accordance with the provisions of an act passed at the third session of the Legislative Assembly of the Territory of Montana, redistricting the Territory, and assigning the judges thereof, approved December 15, 1866, be legalized, and all writs, complaints, answers, true bills, verdicts, judgments, process and proceedings of every kind commenced, or done in said court, or by virtue of said act, be held as legal and binding, in law or equity, as if no act of Congress disapproving and declaring null and void said acts of March 26 and December 15, 1866, had been passed by Congress.

Books and records to be delivered to clerk of district court of Diamond City

SEC. 6. It shall be the duty of the clerk of said court to deliver the records, books and papers of said court to the person acting as clerk for the district court now in existence at Diamond City, for the third judicial district, who shall take charge of said books, papers and records, and cause such process to issue, and such proceedings to be had upon them, as if they had been commenced in the third judicial district court, as now held by the Hon. L. E. Munson, and it shall be the duty of all persons heretofore appointed or elected to fill any office, either county or township, for the "so-called" county of Meagher, to deliver to the persons hereafter to be appointed in accordance with the provisions of this act, to fill the offices heretofore held by them, all the records, books, dockets and papers pertaining to said offices, and said persons so appointed, in accordance with the provisions of this act, shall take possession of said books, papers and records, and treat them as if received from a predecessor in office.

Officers heretofore appointed or elected to deliver papers, records and books to officers appointed under this act.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved November 16, 1867.]

AN ACT to authorize the people of Gallatin county to establish the county seat of Gallatin county.

Nov. 29, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That there shall be an election held in Gallatin county on the twenty-fifth day of December, 1867, at which election the people of said county shall have the right to change their county

HeinOnline -- 1867 100 1867

seat by a vote of the qualified electors of said county, and the place receiving the highest number of legal votes shall thereafter be the county seat.

SEC. 2. Said election shall be conducted in the same manner as other elections, except the notice of the holding of said election shall be twenty days.

SEC. 3. That in case any other place than Gallatin City receive the highest number of votes, it shall thereafter be called Farmington.

SEC. 4. This act to be in force from and after its passage.

[Approved November 20, 1867.]

AN ACT to establish the boundary lines of Edgerton County.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 21, 1867.

SEC. 1. That all that portion of Montana Territory embraced within the following boundaries be and the same is hereby declared to be Edgerton county, to-wit: Commencing at a point in the Missouri river opposite the mouth of Sun river, thence up said Sun river and the most northerly branch thereof, that heads in the Rocky Mountains, to the crest of said Rocky Mountains; thence southerly along the crest of said Rocky Mountains to the head of Ten Mile creek; thence along the divide between Ten Mile creek and the waters of North Boulder to the divide between the waters of Lump gulch and Ten Mile creek; thence along the said divide to the divide between the waters of Grizzly gulch and Lump gulch; thence along the said divide to the divide between the waters that come into Dry gulch above Helena, and the waters of the Prickly Pear creek to the north peak of the mountains easterly from Helena, known as Dry Gulch Mountains; thence due east to the Missouri river; thence down the middle of the broadest channel of said Missouri river to the place of beginning.

SEC. 2. That the county seat of the said Edgerton county be and the same is hereby located at Helena City, Edgerton county, Montana Territory.

SEC. 3. That section six of an act entitled "An Act defining the boundary lines of counties in Montana Territory," approved February 2, 1865, and all acts and parts of acts in anywise conflicting with this act, be and the same is hereby repealed.

1868 4th Regular.pdf

SEC. 4. This act shall take effect and be in force from and after its passage.

[Approved November 21, 1867.]

AN ACT to define the boundary lines of Deer Lodge, Beaverhead and Madison Counties.

Dec. 10, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Defining boundaries of Deer Lodge county.

SEC. 1. That all that portion of the Territory of Montana embraced in the following boundaries shall be known as the county of Deer Lodge, to-wit: Commencing at a point where the forty-ninth parallel of latitude crosses the one hundred and twentieth [112th] degree of longitude; thence due west on said forty-ninth parallel of latitude to a point directly north of Medicine Hill on the Hell Gate river; thence from said point directly south to said Medicine Hill, at the northerly point, into the middle of said river opposite of said point; thence down the middle of said river to the mouth of Stony creek; thence up the middle of said creek to the middle branch of said Stony creek; thence up the said middle branch to the summit of the Rocky Mountains; thence along the summit of the Rocky Mountains to where the one hundred and thirteenth meridian of longitude crosses the Big Hole river; thence down the middle of said river to its mouth in the Jefferson river; thence down the middle of said Jefferson river to what is known as "Parson's Bridge" on said river, thence northward, following the Jefferson County line to the summit of the Rocky Mountains, thence along the summit of the Rocky Mountains to Mullen's Pass; thence north to the place of beginning where the parallel forty-nine crosses the meredian one hundrel and twelve. Provided, that nothing herein contained shall be so construed as to interfere with the western boundaries of Edgerton County as now established, and the County seat of Deer Lodge County is affixed at the City of Deer Lodge.

County seat at Deer Lodge city.

Defining Beaverhead county.

SEC. 2. And be it further enacted, That all that portion of Montana Territory embraced within the following boundaries be and the same is hereby created a county, to be known as Beaverhead county to-wit: Commencing at a point known as Beaverhead Point of Rocks; thence due south to the Territorial lines; thence along the southern boundary of the Territory, following the Territorial line till it reaches the southern boundary line of Missoula county; thence along the southern boundary line of Missoula county to the southern bound-

HeinOnline -- 1867 102 1867

ary line of Deer Lodge county to a point on the Big Hole river due north of Point of Rocks on the Beaverhead river; thence south to the place of beginning, and the county seat of Beaverhead county is hereby located at Bannack city. County seat at Bannack city.

SEC. 3. And be it further enacted, That all that portion of Montana Territory embraced within the following boundaries shall be known as Madison county, to-wit: Commencing at the northeast corner of Beaverhead county, thence in an easterly direction along the southern boundary line of Deer Lodge county to Parson's Bridge; thence down the middle of the main channel of the Jefferson river to a point in said river opposite to where the Boulder puts into the Jefferson river; thence in a south-easterly direction to the mouth of the Big Kanyon on Willow Creek; thence in an easterly direction to Foreman's Crossing; thence east to the top of the main ridge or range dividing the waters of the Gallatin and Madison river; thence south to the Territorial line; thence west along said line to a point where the southeast corner of Beaverhead county strikes said Territorial line; thence along the eastern boundary line of Beaverhead county in a northerly direction to the place of beginning, and that the county seat of Madison county is hereby located at Virginia city, in said county. Defining Madison county. County seat Virginia city.

SEC. 4. That all acts and parts of acts conflicting with this act are hereby repealed.

SEC. 5. This act to take effect and be in force from and after its passage and approval.

[Approved December 10, 1867.]

AN ACT to authorize the County Commissioners of Deer Lodge County to levy a special tax for the construction of County Bridges, [Buildings.]

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 10, 1867.

SECTION 1. That the County Commissioners of Deer Lodge county are hereby constituted a board of special commissioners for the purpose of levying a special tax, not less than four mills on the dollar, upon all the property in said county, liable to taxation, both real and personal, for the purpose of erecting a court house, a county jail, and such other buildings as the said commissioners may deem necessary. County commissioners to levy a tax of four mills on the dollar.

SEC. 2. The tax provided in the preceeding section shall be levied

1868 4th Regular.pdf

from the assessment roll of the year A. D. 1868, and it is hereby made the duty of [the] said assessor to collect said tax and shall pay over to the treasurer every month the amount collected by him.

Buildings to be erected at the town of Deer Lodge.

SEC. 3. The county buildings, as provided in this act, shall be constructed at the town of Deer Lodge, and under the supervision of the said commissioners named in this act, and of such material as they may deem most suitable.

SEC. 4. The tax collected by the provisions of this, shall be paid out by the treasurer upon the order of said commissioners which order shall be signed by at least two members of said board, and the said commissioners shall receive any sum not exceeding seven dollars per day, while actually engaged in the supervision of said buildings, to be paid out of the county treasury.

SEC. 5. The assessor shall receive two per cent. upon the amount collected by him, and six dollars per day while making the assessment, and the treasurer shall receive two per cent. for receiving and disbursing all sums collected under the provisions of this act.

SEC. 6. This act to take effect and be in force from and after its passage.

[Approved December 10, 1867.]

AN ACT to establish the boundary lines of Jefferson County.

Dec. 9, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That all that portion of the Territory of Montana embraced within the following boundaries be, and the same is hereby created a county known as Jefferson county, to-wit: Commencing at the southeast corner of Edgerton county, on the Missouri river; thence up said Missouri river to the mouth of Jefferson river; thence up said Jefferson river to the "Parson's Bridge" across said river; thence westernly along Parson's Toll Road, (leading from said bridge to Butte city,) to the point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence northernly to the summit of the main Rocky Mountain range; thence along said Rocky range to the Bald Mountains, at the head of Ten Mile creek, or the eastern boundary of Edgerton county; thence easternly along said boundary line to the place of beginning.

SEC. 2. That section fifth of an act entitled, "An Act defining the boundary lines of counties in Montana Territory," approved

HeinOnline -- 1867 104 1867

February 2d, 1865, and all acts and parts of acts in anywise conflicting with this act, be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 2, 1867.]

AN ACT to authorize the citizens of Jefferson County to change the County Seat of said County.

Be it enacted by the Legislative Assembly of the Territory of Montana: Dec. 9, 1867.

SECTION 1. That the legal voters of Jefferson county, at the next general election, shall have the right to change their county seat, and the place receiving the highest number of legal votes shall thereafter be the county seat of said county. To change county seat.

SEC. 2. That it shall be the duty of all county officers of Jefferson county to remove to and hold their offices at such place as may be chosen as county seat of said county, by a vote of the people thereof, within forty days after the vote shall have been canvassed and the result declared. County officers to remove.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 9, 1867.]

AN ACT to define the boundaries of the County of Missoula.

Be it enacted by the Legislative Assembly of the Territory of Montana: Nov. 20, 1867.

SECTION 1. That all that portion of Montana Territory embraced within the following boundaries, shall be known as Missoula county,

 1868 4th Regular.pdf

to-wit: Commencing at a point of intersection of the parallel of forty-nine degrees, with the line of longitude, one hundred and sixteen degrees, thence along the said line of longitude south to the summit of the "Bitter Root Mountains," and along the summit of the "Bitter Root Mountains" in a southerly direction to the summit of the Rocky Mountains, and along the said summit of the Rocky Mountains to the head waters of the middle branch of Stony creek; thence down the centre of the said creek to Hell Gate river; thence up the centre of the said Hell Gate river to a point known as Medicine Hill; thence due north to the parallel forty-nine degrees, and along the said parallel of latitude, to the place of beginning.

SEC. 2. All acts and parts of acts, conflicting with this act, are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved November 20, 1867.]

AN ACT to authorize the County Commissioners of Missoula County to levy a special tax for the purpose of constructing Bridges over the Hell Gate and Bitter Root Rivers.

Dec. 2, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The Board of County Commissioners of Missoula county are hereby authorized and empowered to levy a special tax for three years, not to exceed five mills on the dollar in any one year, upon all property in said county, liable to taxation, for the purpose of building a bridge over Hell Gate river, at the town of Missoula, also for constructing one or more bridges over the Bitter Root river, on the line of the wagon road from Missoula to the Bitter Root valley, at such points as may seem to said commissioners most practicable.

SEC. 2. The tax as provided in the preceding section shall be levied and collected at the time and in the same manner as other taxes are collected and paid into the county treasury, and shall be set apart for the purpose designated in this act.

SEC. 3. The said bridges as herein provided shall be constructed under the direction of said board of [county] commissioners, and all money raised by the provisions of this act, shall be drawn from the treasury by their order, which order shall be signed by at least two of said board.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved December 2, 1867.]

HeinOnline -- 1867 106 1867

1868 4th Regular.pdf

AN ACT to locate the County Seat of Missoula County.

Nov. 13, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the county seat of Missoula county be, and the same is hereby located at the town of Missoula Mills, in the said county of Missoula.

SEC. 2. All acts and parts of acts, in conflict with this act are hereby repealed.

SEC. 3. This act to take effect and be in full force from and after its passage and approval.

[Approved November 13, 1867.]

1868 4th Regular.pdf

PRIVATE AND SPECIAL LAWS

AN ACT entitled "An Act to re-enact an act to authorize C. D. Loutsenheizer, A. J. Burr and C. C. Stubbs, their heirs and assigns, to maintain and keep a Ferry on the Missouri River, at the Mouth of Trout Creek, in Meagher County," approved Dec. 14, 1866.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. C. D. Loutsenhizer, A. J. Burr and C. C. Stubbs, their heirs and assigns, are hereby granted the exclusive privilege to establish and maintain a ferry across the Missouri river, at the mouth of Trout creek, in Meagher county, for a period of six years from the passage of this act, during which period no other ferry shall be established within one mile of said ferry below, and three miles above, on said river.

SEC. 2. The said corporators, their heirs or assigns, shall at all times after the passage of this act, keep a good and sufficient ferry boat at said ferry, with all necessary skiffs, and hands to work the same, and shall at all times be compelled to set over all persons, with their wagons, teams and property, without unnecessary delay upon the tender of the fees allowed by law. Provided, that said corporators shall not be compelled to set over any person after dark, or when the river may be rendered unsafe by high water, wind or ice.

SEC. 3. Any person damaged by the failure on the part of said corporation to comply with the provisions of this act, may recover such damages as he may have sustained, together with his costs, in any court having jurisdiction.

SEC. 4. Said corporators, their heirs and assigns, shall be allowed to charge and collect, at said ferry, the following toll, viz: for each wagon or other carriage drawn by one animal or span of animals, two dollars and fifty cents; for each additional span, fifty cents; for each horse and rider, fifty cents; for loose horses and cattle, twenty-five cents; for pack animals, fifty cents; for hogs and sheep, ten cents.

SEC. 5. This act to be in force from and after its passage.

[Approved November 25, 1867.]

HeinOnline -- 1867 108 1867

1868 4th Regular.pdf

AN ACT to re-enact an act entitled, "An Act to authorize Robert Tingley and John Kennedy and their associates to construct a wagon road around the Falls of the Missouri River."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Robert Tingley and John Kennedy, their associates and assigns are hereby declared to be a body politic and corporate, under the name and style of the Missouri River Falls Wagon Road Company, and in that capacity may sue and be sued, may make contracts, have a seal and possess all the necessary powers of a corporation.

SEC. 2. Said company shall have the exclusive privilege of one mile wide on the northerly side of said Missouri river, to construct a wagon road as follows: Commencing at a point above the great falls of the Missouri, in Choteau county, to which the flat boats may safely approach in descending the river, and running from thence by the most direct and practicable route to the nearest point below said falls, at which a boat may be launched, or may ascend, being a distance of about eight miles.

SEC. 3. Said road shall be completed within one year from the date of this act, and the privilege and powers herein granted shall be continued for the term of fifteen years thereafter.

SEC. 4. Said corporation shall have one toll gate on said road, and shall collect thereat the following rates of toll: For every wagon with one span of mules, horses or oxen, one dollar; for every additional span, fifty cents; for every single horse or mule, with wagon, seventy-five cents; for each man on horseback, or pack animal, twenty-five cents; for each head of loose stock, ten cents.

SEC. 5. That Robert Tingley and John Kennedy and their associates, shall, after the completion of said road, keep the same in good repair and condition, to accommodate the traveling community, and if any accident shall happen to person or property, while passing over said road, in consequence of its being in an unsafe condition for travel, except when caused by snow or ice, said Tingley and Kennedy and their associates shall be responsible for all damages thus sustained. They shall erect, before proceeding to demand toll on said road, a notice in some conspicuous point on said road, with the rate of toll plainly inscribed thereon.

SEC. 6. That any subsequent Legislative Assembly of the Territory of Montana shall have the power to modify or amend this act.

SEC. 7. This act shall not interfere with prior vested rights.

SEC. 8. This act to take effect and be in force from and after its passage and approval.

[Approved December 2, 1867.]

HeinOnline -- 1867 109 1867

 1868 4th Regular.pdf

AN ACT to re-enact an act entitled, "An Act to incorporate the Gold Hill Mining and Tunnelling Company of Montana," approved April 2d, 1866.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Joseph H. Millard, John P. Bruce, John S. Rockfellow, Samuel Word, A. M. McKinney, James H. Anderson, Wm. B. Gardner, James Gormly, Wm. J. Clark, Isaac N. Alden and Dezell Gilbert, and their associates and assigns, are hereby constituted a body politic and corporate, under the name and style of the Gold Hill Mining and Tunnelling Company of Montana.

SEC. 2. The capital stocy of said company shall be two hundred and fifty thousand dollars ($250,000.00) and shall be divided into shares of not less than fifty dollars; provided, said company shall have power to extend their capital stock at their pleasure to one million of dollars, and divide the same into shares not exceeding one hundred dollars each.

SEC. 3. That said company shall have power to make and afterwards alter all needful rules, by-laws and regulations for the government of said corporation, the issuing and transfer of their stock and the management of all the company business, shall have power to elect a president, secretary, treasurer, superintendent and board of directors.

SEC. 4. The said company by their corporate name shall have power and be capable of making contracts, of sueing and being sued, impleading and being impleaded, in all courts of law and equity in this Territory, and may have and use a common seal, which may be altered at pleasure.

SEC. 5. Said company may purchase and hold property both real and personal, which shall be necessary for the exercise of the legitimate business and powers herein granted.

SEC. 6. That said company shall have the privilege of tunnelling for gold and silver quartz lodes within the limits prescribed according to the quartz law of this Territory, approved December 26, 1864, and to an act entitled, "an act concerning location of tunnels," approved January 31, 1865, as follows, to-wit: commencing at a point in Granite gulch, in Madison county, Montana Territory, one thousand yards up said creek from the center of Main street in Junction City, where Granite creek crosses the same; thence up the meanderings of said creek twelve hundred yards; thence southeast two thousand yards: thence west twelve hundred yards; thence northwest two thousand yards to the place of beginning. That the privileges hereby given be and extend for the period of twenty years from the approval of this act. Nothing in this act shall be so construed as to impair the prior or vested rights of others to any quartz vein through which said tunnel may be constructed.

HeinOnline -- 1867 110 1867

SEC. 7. This act to take effect and be in force from and after its approval by the Governor.

[Approved December 6, 1867.]

AN ACT to re-enact an act to authorize Thomas A. Holmes and Luther M. Brown and their associates, heirs and assigns, to establish a Ferry across the Missouri River, between the Counties of Edgerton and Meagher.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the right to erect, operate and maintain a ferry across the waters of the Missouri river in Edgerton and Meagher counties, to be located at or near a point on said river opposite of what is now called French Bar, in said county of Edgerton, and terminating at or near the mouth of a creek emptying into said river in said county of Meagher, and called and known as Clarke's Creek, is hereby granted to Thomas A. Holmes and to Luther M. Brown, their associates, heirs and assigns and succesors, for the term of ten years, with the privileges and subject to the conditions prescribed by this act, and no other ferry shall be established or maintained within the distance of one mile on each side of the ferry hereby established; Provided, that nothing herein contained shall interfere with any prior or vested right.

SEC. 2. It shall be lawful for the said Thomas A. Holmes and Luther M. Brown, their heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river, viz: For each footman, twenty-five cents; for each man and horse fifty cents; for each wagon and two animals, two dollars; for each additional span of horses or cattle, fifty cents; for each loose animal other than sheep or hogs, twenty-five cents; for each sheep or hog ten cents. Nothing herein contained shall be so construed as to prevent the Legislative Assembly from altering the rates of toll provided for in this act.

SEC. 3. The said Thomas A. Holmes and Luther M. Brown, their heirs and assigns, shall at all times keep at said ferry a good and sufficient flat boat and small boat, with sufficient hand or hands to work the same, for the transportation of persons and their property across said river without unnecessary delay, and in failing to do so this act shall be null and void.

HeinOnline -- 1867 111 1867

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved December 6 1867.]

AN ACT to re-enact "An Act to authorize Constant Guyot, his heirs and assigns, to construct and maintain a toll road from the Little Black Foot River to the Ten Mile and Helena road."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Constant Guyot, his heirs and assigns, be and are hereby authorized to construct and maintain a toll road from the Little Black Foot river, in Deer Lodge county, commencing at a point on the said river known as the French Woman's Ranch, over and along a route already selected, on which a road has been partially constructed by the said Constant Guyot, across the main range of the mountains to or near the head of Ten Mile Creek, thence over the most practicable route to its intersection with the Ten Mile and Helena road in Edgerton county. Said authority to continue for ten years from the date of this act; and the said Constant Guyot, his heirs and assigns, are hereby granted the exclusive right of way over and along said route, and for the distance of one mile on each side of the same, for the purpose herein mentioned.

SEC. 2. That the said Constant Guyot, his heirs and assigns, shall be required to complete said road in twelve months from the passage of this act.

SEC. 3. That Constant Guyot, his heirs and assigns, be required to keep the said road, when completed, in good repair and condition, so as at all reasonable times to render transportation and travel both speedy and safe, and they shall at each terminus of said road erect a sign board, lettered so as to indicate the same to be a toll road, with the rates of toll thereon.

SEC. 4. That it shall be lawful for the said Constant Guyot, his heirs and assigns, to charge and collect the following rates of toll on said road: For each wagon, carriage or buggy with one horse or one span of horses, or one yoke of cattle, one dollar ($1.00); each additional span of horses or yoke of cattle, twenty-five (25) cents; each horse and rider, twenty-five (25) cents; each animal with pack, ten (10) cents; loose animals, five (5) cents; sheep and hogs, two and one half (2½) cents; said toll to be collected on the west side of the main range of the Rocky Mountains.

HeinOnline -- 1867 112 1867

1868 4th Regular.pdf

SEC. 5. That after the expiration of three years from the date of the completion of said road, any subsequent Legislature shall have authority to alter or modify the above rates of toll, as in their judgment the public interest may require.

SEC. 6. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 3, 1867.]

AN ACT to re-enact an act entitled "An Act authorizing Samuel Bresler, Robert Hedge, their associates, heirs and assigns, to construct and maintain a toll road from Virginia City, in Madison county, to Sterling, in Hot Springs District."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Samuel Bresler, Robert Hedge, their associates, heirs and assigns, be and they are hereby authorized to construct and maintain a toll road for the term of fifteen years, from Virginia City, Madison county, by way of Slade's Gulch and Meadow Creek, to Sterling, in Hot Springs District; and the said Samuel Bresler, Robert Hedge, their associates, heirs and assigns, are hereby granted the right of way along said route, and for a distance of one half mile on each side of the same, for the purpose herein named.

SEC. 2. The said Samuel Bresler, Robert Hedge, their associates, heirs and assigns, shall be required to complete said road within twelve months from and after the passage of this act.

SEC. 3. That the said Samuel Bresler, Robert Hedge, their associates, heirs and assigns, be required to keep said road, when completed, in good repair and condition, so as at all reasonable times to render transportation and travel both speedy and safe, and they shall at each terminus of said road erect a sign board, so as to indicate the same to be a toll road, with the rates of toll thereon: Provided, that but one gate shall be established on said road, to be located at least one mile from the corporate limits of Virginia City, or at any point on said road from there to Meadow Creek, but at no other point: Provided further, that the rights granted in this charter shall in no wise interfere with the present wagon road from Virginia City to Sterling City.

SEC. 4. That it be lawful for the said Samuel Bresler, Robert Hedge, their associates, heirs and assigns, to charge and collect the

HeinOnline -- 1867 113 1867

1868 4th Regular.pdf

following rates of toll: For each wagon or other conveyance drawn by one span of animals, one dollar; for each additional span of animals, twenty-five cents; for each horse and rider, twenty-five cents.

SEC. 5. That after the expiration of one year from the date of the completion of said road, any subsequent Legislature shall have authority to amend or modify the above rates of toll as in their judgment the public interest may require: Provided, that the board of county commissioners of Madison county, at any time after one year from the completion of said road, upon the payment of the appraised value of said road, the incorporators declare the same a county road.

SEC. 6. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 12, 1867.]

AN ACT to re-enact an act entitled an act to authorize Henry Gassett and James Sinclair to construct and maintain a ferry or bridge across the Jefferson River, passed and approved by the third session of the Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the said Henry Gassett and James Sinclair, their heirs, assigns and associates, be and they are hereby authorized to construct, where they now have a ferry in good running condition, a bridge or a new ferry across the Jefferson river at a point about nine miles above what is known as Parson's Bridge, on said river, and maintain the same for the term of eight years from and after the passage of this act.

SEC. 2. So long, not exceeding eight years, as the said Henry Gassett, James Sinclair, their heirs, assigns and successors, shall maintain a safe and sufficient bridge or ferry at the point aforesaid, they shall be authorized and empowered to charge, demand and collect the following rates of toll, viz: For a loaded wagon drawn by one span of horses, mules, or a yoke of cattle, two dollars; for every additional two animals, twenty-five cents; for every light wagon, one dollar and twenty-five cents; for pack animals, each twenty-five cents; for every horse, mule and rider, twenty-five cents; for every head of loose animals, the sum of ten cents.

SEC. 3. That said company shall have the right of way upon each side of said bridge or ferry, up and down said Jefferson river, for

HeinOnline -- 1867 114 1867

1868 4th Regular.pdf

four miles, and shall be held and obligated to keep said bridge or ferry in a good, safe and sufficient condition for use both day and night.

SEC. 4. That the board of county commissioners of the county in which said bridge or ferry is or may hereafter be located, have and they are authorized to fix the rates of tolls herein mentioned, after one year.

SEC. 5. That any subsequent Legislative Assembly be authorized to amend, change or modify this act.

SEC. 6. This act shall take effect and be in force from and after its passage.

[Approved December 12, 1867.]

AN ACT to re-enact an act authorizing Henry Whaley, Joseph V. Stafford and William E. Pinney, and their associates, to establish and maintain a Toll Road from Cave City, in Cave Gulch, to the mouth of said Gulch in Meagher county, Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Henry Whaley, Joseph V. Stafford and William E. Pinney, and their associates, successors and assigns, are hereby granted the exclusive right and privilege to establish and maintain a toll road, commencing at Cave City in Cave gulch and running to the mouth of said gulch, and over the most convenient and practicable route, in the county of Meagher and the Territory of Montana.

SEC. 2. That the said parties and their successors and assigns shall have the right to charge and collect toll on the said road as follows: For each wagon and single team, two dollars; for each additional team, fifty cents; for each pack animal, twenty-five cents; loose horse or mule, fifteen cents; loose cattle per head, ten cents.

SEC. 3. That said parties, or their successors, or assigns, may establish, at any place, one toll gate on said road, but shall in no event collect more toll than is in this act heretofore provided for.

SEC. 4. That said Henry Whaley, Joseph V. Stafford and William E. Pinney, and their successors and assigns, shall have the exclusive right to build and maintain such toll road between the points aforesaid, and said exclusive right shall extend over all the Territory between the said points of said road for the space of one mile on either side of the same, and which right of way, with all other privileges

HeinOnline -- 1867 115 1867

herein given, are hereby granted to said parties and their assigns for the term of ten years: Provided, said parties shall complete said road, so that the same can be safely passed with wagons, within one year from the passage of this act. Said parties shall keep said road in such repair as to enable the same to be passed at all times with safety.

SEC. 5. At each toll gate said parties shall cause a bulletin board to be placed in a conspicuous place with the rates of toll to them given under this act.

SEC. 6. This act to take effect from and after its passage.

[Approved December 12, 1867.]

AN ACT to re-enact an act entitled an act to incorporate the Black Tail Deer and Helena Wagon Road Company, passed and approved at [the] Second Session of the Legislature of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That R. J. Mitchell, his associates and assigns, be and they are hereby constituted a body corporate and politic, under the name and style of the Black Tail Deer and Helena Wagon Road Company, and by that name may make contracts, sue and be sued, plead and be impleaded in all courts in this Territory, and may have and use a common seal which may be altered at pleasure.

SEC. 2. That said party shall have the exclusive privilege of constructing and maintaining a toll road, and that said company shall have the right of way along the line of said road, and include the right of way upon each side thereof four rods; and that said company shall have the power and are hereby authorized to erect upon the line of said road one toll gate between the Stinkingwater and the crossing of the Jefferson river at the Crawford Bridge, and at said gate collect the following rates of tolls, viz: Upon each wagon or other vehicle drawn by one span of horses, mules or yoke of cattle, the sum of one dollar; and upon each additional span of horses, mules or yoke of cattle, twenty-five cents; upon each vehicle drawn by one animal, the sum of fifty cents; upon pack animals each, the sum of twenty-five cents; upon loose stock driven upon and over said road, the sum per head of ten cents.

SEC. 3. That said corporation shall have the power to make and afterwards to alter all needful rules and regulations for the government of said company, and that the rights and power herein granted

1868 4th Regular.pdf

shall continue for the period of ten years; provided, that the county commissioners of the county or counties through which said road is constructed shall, after two years, have the power to fix the rate of toll to be collected on said road.

SEC. 4. This said company shall commence the construction of said road within three months after the passage of this act, and complete the same in one year thereafter.

SEC. 5. This act may be amended, modified or repealed by any subsequent Legislature.

SEC. 6. This act to take effect and be in force from and after the passage of this act.

[Approved December 12, 1867.]

AN ACT to re-enact an act entitled an act to incorporate the Madison Bridge Company, passed and approved at the Third Session of the Legislative Assembly of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Milton Canaday and Robert M. Canaday, their heirs, assigns and associates, are hereby constituted and declared a body corporate and politic by the name and style of the Madison Bridge Company, and by that name may construct, sue and be sued, plead and be impleaded, in all courts of this Territory, and may have and use a common seal, which may be altered at pleasure.

SEC. 2. Said company shall have power to make and afterward to alter all needful rules and regulations for the government of said company and the management of said bridge, now partially completed and constructed by them.

SEC. 3. Said company shall have power and are hereby authorized to construct and build a substantial bridge across the Madison river, about four miles above the Bozeman crossing and upon a direct route from Sterling City, in Madison county, to Bozeman City in Gallatin county, and the right of way for two miles upon each side of said bridge up and down of said Madison river, and that this privilege and right shall not exceed eight [years;] provided, that said corporators by the powers and privileges herein granted, shall not interfere with any prior rights vested or vested rights granted.

SEC. 4. So long, not exceeding eight years, and the said Milton Canaday and Robert M. Canaday, their heirs, assigns and successors, shall maintain a safe and sufficient bridge between the points

HeinOnline -- 1867 117 1867

1868 4th Regular.pdf

aforesaid, they shall be and are hereby authorized and empowered to demand and collect the following rates of toll, viz: For a wagon or other vehicle drawn by one span of horses, mules or yoke of cattle, the sum of two dollars, and upon each additional span of horses, mules or yoke of cattle, the sum of fifty cents; each horse and rider, fifty cents; each pack animal twenty-five cents; loose stock per head, fifteen cents; carriage or buggy, single, one dollar; double, one dollar and fifty cents.

SEC. 5. That said company shall be held and obligated to keep said bridge in good and safe condition and repair for all wagons, vehicles and trains, both day and night.

SEC. 6. This act may by any subsequent Legislature be modified and amended, and the county commissioners of the county in which said bridge is or may hereafter be located and built from the passage of this act alter and modify the rates of toll herein specified.

SEC. 7. The county commissioners of the county in which this bridge may be located shall have the power, on payment of the first cost to the owners, to declare the same a free bridge at any time after two years from the completion of said bridge.

SEC. 8. That in case said corporators mentioned in this act do not complete the said bridge mentioned in section three of this act within nine months from the passage of this act, the rights herein granted shall become null and void.

SEC. 9. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 12, 1867.]

AN ACT to amend an act entitled, "An Act to incorporate the city of Nevada, approved Feb. 9, 1865.

Be it enacted by the Legislative Assembly of the Territory of Montana:

That section first of article fourth of said act be and the same is hereby amended by striking out the words, "April, A. D. 186—," and inserting, "February, A. D. 1868."

That section twelve of article eighth of said act be amended by striking out the words, "James Williams, N. J. Bond, and Wm. T. Wheeler," and inserting the names of Albert Sheffler, O. M. Sweet and John Donegan," and striking out the words, "third day of April

HeinOnline -- 1867 118 1867

A. D. 1865," and inserting in lieu thereof, "First Monday in January A. D. 1868."

This act to take effect from and after its passage.

[Approved December 9, 1867.]

AN ACT to re-enact an act entitled an act to authorize Samuel Weir and his associates to construct and maintain a bridge or ferry across the Madison river, near the mouth of the same.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That said Samuel Weir, his heirs and assigns, be and are hereby authorized to construct a bridge or ferry, at their option, across the Madison river, in Gallatin county, at a point about one mile above the mouth of said river; and for this purpose the said Samuel Weir and his associates, their heirs and assigns, are hereby granted the exclusive right to establish and maintain a ferry or bridge, at their option, at said point and for the distance of two and one half miles up and down of said river from said point; and said franchise is hereby granted for the term of ten years from the passage of this act.

SEC. 2. That the said Samuel Weir and his associates, their heirs and assigns, are hereby required to construct and maintain in good repair, good and sufficient boats for the safe transportation of all persons, with their animals and teams, at all reasonable times; or to construct a substantial and safe bridge for such transportation, and keep the same in good repair and condition at all times during the continuance of this franchise.

SEC. 3. That the said Samuel Weir, his associates, their heirs and assigns, are hereby authorized to collect ferriage or tolls for transportation over such ferry or bridge at the following rates, to-wit: For each wagon with one span of horses, mules or oxen, two dollars; for each additional span, fifty cents; for man and horse, fifty cents; for pack animals and loose stock, horses, mules and cattle, each twenty-five cents; for sheep and swine, ten cents.

SEC. 4. Any subsequent Legislature shall have the power to alter or amend this franchise.

 1868 4th Regular.pdf

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved December 12, 1867.]

AN ACT to re-enact an act entitled, "An Act to authorize James M. Baily, his heirs and assigns, to construct and maintain a toll bridge on the Hellgate River, in Deer Lodge county."

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That James M. Bailey, his heirs and assigns, be and they are hereby authorized to construct and maintain a toll bridge on the Hellgate river, at or near a point known as the Rocky Bluffs, about one mile above the mouth of Gold creek, in Deer Lodge county.

SEC. 2. That the said James M. Bailey, his heirs and assigns, shall be required to complete the said bridge within six months from the passage of this act, and that all persons shall be prohibited from constructing any bridge or ferry within a distance of two and one half miles above or below said bridge.

SEC. 3. That it shall be lawful for the said James M. Bailey, his heirs and assigns, to charge and collect toll on the said bridge as follows, to-wit: For each wagon or vehicle with one span of animals, two dollars; for each additional span of animals, fifty cents; horse and rider, fifty cents; each pack animal, fifty cents; loose animal, ten cents; hogs and sheeps, five cents.

SEC. 4. That at any time after three years after the passage of this act, the county commissioners of Deer Lodge county shall have the authority upon the presentation of a petition signed by one hundred citizens of said county, to alter or modify the tolls on said bridge, as in their judgment the public interests may require.

SEC. 5. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 10, 1867.]

HeinOnline -- 1867 120 1867

1868 4th Regular.pdf

AN ACT to provide compensation to John P. Bruce for services rendered the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That there shall be and is hereby appropriated the sum of eighty dollars, to be paid to John P. Bruce, for publishing in the Montana *Democrat* the official vote of the election held for Delegate to Congress, on the first Monday in September, 1867; for publishing the proclamation of the Governor, declaring James M. Cavanaugh elected Delegate to the Fortieth Congress, and Governor's proclamation declaring the election of Councilmen and Representatives to the Legislature on the first Monday in November, 1867, which account has been approved by the Governor.

SEC. 2. That the Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasury, for the sum named in the first section of this act in favor of John P. Bruce, to be paid out of any money not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage and approval by the Governor.

[Approved December 10, 1867.]

AN ACT to amend an act entitled an act to incorporate Virginia City, approved 30th of December, 1864, and to repeal certain parts of said act.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the following officers created by the first section, article four, of said act, be and the same are hereby repealed and declared void, to-wit: The office of city clerk; the office of city assessor; the office of street commissioner. That from and after the passage of this act the city attorney shall be, by virtue of his office, city clerk; that from and after the passage of this act the city treasurer shall, by virtue of his said office, perform all the duties of city collector, for which services they shall receive no compensation out of the city treasury.

HeinOnline -- 1867 121 1867

1868 4th Regular.pdf

SEC. 2. That section one of article four of the act to which this is amendatory be and the same is hereby amended so as to read as follows: On the first Monday in February, 1868, an election shall be held in said city for one Mayor for the city, and two Aldermen for each ward, and forever thereafter, on the first Monday in February, in each year there shall be held an election for one Mayor for the city and two Aldermen for each ward. Provided, special elections to fill vacancies and for other purposes, may be held at any time which the city council may direct, and in case a special election shall be ordered to elect any city officer, or upon any question affecting the city at large, it shall be lawful to open one set of polls, in some central position in said city, to be designated by the council, at which all legally qualified electors may vote, without reference to the particular ward in which they live.

SEC. 3. No person who is not a citizen of said city, or not residing within the corporate limits thereof, shall vote at any election, general or special, for city or ward officers; and if any person or persons who are not residents of, and not residing therein, shall at any such election vote, or attempt to vote, for or against any municipal or city officer therein, or shall persuade or entice or induce others to do so, knowing him or them to be non-residents of said city, the person so offending shall, on conviction, be fined in a sum not less than one thousand dollars, and be imprisoned in the county jail not less than one year.

SEC. 4. Any person residing in said city or within the corporate limits thereof, who shall attempt to vote more than once or shall persuade, entice or attempt to persuade or entice any person to vote more than once at any poll or precinct at any election held therein, under and by virtue of the charter and by laws or ordinance of said city, shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than five hundred dollars, or be imprisoned in the penitentiary of this Territory for a term not less than one nor more than five years.

SEC. 5. Nothing in the act incorporating said city, or this amendment thereto, shall be so construed as to authorize the city council or any authority under this charter to impose any tax or license upon any freight or freighters of groceries and provisions, or their wagons or teams, or the landing thereof; nor shall they impose any tax or license whatever, upon any person vending, selling or in any way disposing of, within the city limits, any vegetables, bread stuffs or any products of any farmer or dairyman in this Territory; and all power conferred on said city or the common council thereof, or to tax or license the same, be and the same is hereby repealed.

SEC. 6. The police department of said city shall in all respects be under the management and control of the common council of said city, and they shall have the exclusive power to employ and discharge, at their pleasure, and regulate all police officers and persons appointed on, and performing duty on said police; to prescribe and define their duties; nor shall any person act as a police officer in said city or perform any of the duties of policemen without being employed by and receiving his authority from the city council.

HeinOnline -- 1867 122 1867

1868 4th Regular.pdf

SEC. 7. That from and after the passage of this act, the common council of said city shall have the exclusive power and authority to appoint the police justice, one city treasurer, one city marshal and one city attorney, and to fill all vacancies in said offices; and the police justice or magistrate and other officers so appointed, shall have all the powers, jurisdiction [and] authority conferred upon said officers by the act incorporating said city, or any ordinance thereinunder; and all of said act of incorporation, or parts thereof, authorizing an election of said officers by the votes of said city, be and the same is hereby repealed.

SEC. 8. All fines imposed by the police magistrate of said city for any offence which is by the laws of this Territory made punishable by fine, shall, when collected, be paid into the county treasury of Madison county for the benefit of the school fund of said county, in the same manner as if said fines had been imposed by a justice of the peace of said county; and said police magistrate shall be subject to the same penalties for a violation of this act as is now by law imposed on justices of the peace.

SEC. 9. All acts and parts of acts conflicting herewith are hereby repealed.

SEC. 10. This act to take effect and be in full force from and after its passage and approval.

[Approved December 13, 1867.]

AN ACT appropriating monies out of the Territorial Treasury, paying Edward Lovelock, Sheriff of Meagher County, and W. K. Roberts, Sheriff of Edgerton County, for money spent in the trial of the Cave Gulch murder case.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There is hereby appropriated out of any monies in the Territorial treasury not otherwise appropriated the sum of twenty-five hundred dollars for the relief of Edward Lovelock, and the further sum of five hundred dollars for the relief of W. K. Roberts, being monies actually expended by them in the Cave gulch murder case.

SEC. 2. The Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for the susm named in the first section of this act, in favor of Edward Lovelock and W. K. Roberts, respectively.

HeinOnline -- 1867 123 1867

SEC. 3. This act to take effect and be in full force from and after its passage and approval.

[Approved December 12, 1867.]

AN ACT to provide for the compensation of John Guy, for services rendered the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be, and is hereby appropriated out of the Territorial treasury, the sum of five hundred dollars to be paid to John Guy, for money expended and time employed in the pursuit and search of the murder or murderers of one Davidson, of Gallatin county.

SEC. 2. The Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasurer for the sum named in the first section of this act in favor of Guy, which shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

[Approved November 23, 1867.]

AN ACT authorizing the Auditor of the Territory to issue warrants in favor of Hon. John H. Rogers for services rendered.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. The auditor of the Territory of Montana is authorized and directed to issue warrants upon the treasury of this Territory in

HeinOnline -- 1867 124 1867

1868 4th Regular.pdf

favor of John H. Rogers, to the amount of seven hundred and ninety-five dollars, for attending as a member of the House of the legislative Assembly of Montana at Bannack, in the years 1864 and 1865, for which he has received nothing.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 10, 1867.]

AN ACT to provide compensation to E. S. Wilkinson and Peter Ronan, for services rendered the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That there shall be and is hereby appropriated the sum of one hundred and seventy-six dollars, to be paid to E. S. Wilkinson and Peter Ronan, for publishing in the Rocky Mountain *Gazette*, the proclamations of Acting-Governor Meagher, from April 6th, 1867, to July 6th, 1867; also, Governor Smith's proclamation for like time, for publishing reward for the body of Gen. Meagher, and other services rendered in like manner, as shown by account.

SEC. 2. That the Territorial auditor is hereby authorized and instructed to draw his warrant on the Territorial treasury for the sum named in section first of this act, in favor of E. S. Wilkinson and Peter Ronan, to be paid out of any money not otherwise appropriated.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 13, 1867.]

AN ACT to re-enact an act entitled "An Act to authorize Owen Gilmore and M. P. Lowery to construct and maintain a ferry or bridge across Sun River," approved Dec. 7, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. Owen Gilmore and M. P. Lowery, their heirs and

HeinOnline -- 1867 125 1867

 1868 4th Regular.pdf

assigns, be and are hereby authorized to construct and maintain either a bridge or ferry, at their option, across Sun River, at any point they may select within one mile below a place known as Little Dog's Farm on said river, with the exclusive right to construct and maintain such bridge or ferry for the distance of two miles above and below the point they may select to construct the same; and such franchise is hereby granted to them for the term of fifteen years from the date of the passage of this act.

SEC. 2. The said Owen Gilmore and M. P. Lowery or their heirs or assigns, are required to have constructed on or before the 15th day of May, A. D. 1867, good and sufficient boats with proper tackling, properly arranged, and a sufficient number of persons to work the same for the safe and speedy transportation of all persons with their teams and animals, at all reasonable times of the day, or else a good and substantial bridge across said stream for such transportation, and to keep the same in good repair at all times during the continuance of this franchise; and the said Owen Gilmore and M. P. Lowery, or their heirs or assigns, shall be liable to pay all damages that any person may suffer on account of the carelessness or negligence of the said Gilmore and Lowery, or their heirs or assigns, or employees, in carrying out their duties under the provisions of this act.

SEC. 3. The said Owen Gilmore and M. P. Lowery are hereby authorized to charge and collect ferriage or toll for transportation over such ferry or bridge as follows: For each wagon or vehicle drawn by one animal or by one span of horses or mules, or yoke of cattle, two dollars and fifty cents; for each additional span or yoke, fifty cents; for each horse and rider, fifty cents; for each loaded pack animal, twenty-five cents, for each footman, twenty-five cents; for loose cattle, mules, jacks or horses, each twenty cents; for sheep or swine, per head, ten cents.

SEC. 4. And the said Owen Gilmore and M. P. Lowery, or their heirs or assigns, are hereby authorized to lay out and mark with good substantial stakes, a road leading to and from such ferry or bridge, on either side of said Sun river, for the distance of twenty miles, and maintain and keep the same open and in good repair for the use of the public, for the term of the continuance of this franchise; provided, that said parties shall never ask or collect toll on such road.

SEC. 5. This franchise shall not be deemed or taken as a denial of the right to construct and maintain a free ferry or bridge at any point on the aforesaid Sun river, except the place granted in this charter, and four rods on either side.

SEC. 6. The Legislature of this Territory may reduce the rates of toll herein prescribed at any time after one year from the date of the passage of this act.

SEC. 7. This act shall take effect and be in force from and after its passage.

[Approved December 24, 1867.]

HeinOnline -- 1867 126 1867

AN ACT to re-enact an act entitled "An Act to incorporate the Eldorado and Diamond City Wagon Road Company," passed April 12, 1866.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That William Vantilburgh, C. T. Smith, John E. Tyler, Thomas Riley, J. H. Harding and Colin Campbell, be and they are hereby constituted a body corporate under the name and style of the Eldorado and Diamond City Wagon Road Company.

SEC. 2. Said corporation is hereby invested with the necessary powers to construct and build a wagon road, commencing at the mouth of Confederate Canyon, thence up said canyon as near as practicable to Eldorado and Diamond City, and thence across the main range of the Belt mountains to Fort Benton.

SEC. 3. Said corporation shall be allowed and entitled to charge the following rates of toll on said road: For each wagon drawn by one yoke of oxen, pair of horses or mules, one dollar and twenty-five cents ($1.25); for each additional yoke of oxen, span of horses or mules, twenty-five cents (25c.); for all saddle horses or mules, per head twenty-five cents (25c.); and for all loose stock per head, five cents (5c.)

SEC. 4. The said company shall complete said road to Diamond City by the first day of June, A. D. 1866[8].

SEC. 5. The said corporation may, on the completion of said road to Eldorado City, erect a toll gate and collect half the rate of toll prescribed in section three (3) of this act.

SEC. 6. When said company shall have completed said road to Eldorado or Diamond City, they shall notify the county commissioners of the county through which said road passes of the fact, and within ten days therefrom the county commissioners shall appoint one of their number to examine said road, and after the examination of said road by said commissioner, he shall report to said company that said road is in a good and passable condition they may proceed to collect toll; but no toll shall be collected until such time as said commissioners shall consider said road in a good and passable condition. Said company shall pay said commissioner ten (10) dollars per day for his services in examining said road.

SEC. 7. This act may be amended, modified or repealed by any subsequent Legislature.

SEC. 8. That said corporation shall enjoy all the rights and privileges and incur all the responsibilities usually appertaining and belonging to similar bodies corporate.

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

[Approved December 20, 1867.]

1868 4th Regular.pdf

AN ACT to re-enact an act authorizing Ray W. Andrews to establish a Ferry across the Missouri River.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That Ray W. Andrews is authorized and empowered to establish, maintain and operate a ferry across the Missouri river at or near the mouth of the Muscleshell river, for the term of fifteen years from the passage of this act, and shall be entitled to the exclusive control of the banks of said river for a distance of two miles and a half each way from the point where said ferry shall be located, together with all the privileges and subject to the conditions prescribed by law and by this act.

SEC. 2. So long, and not to exceed fifteen years, as the said Ray W. Andrews, his associates and successors, shall maintain, operate and carry on a good, safe and sufficient ferry, at or near the point designated, they shall be authorized to collect the following rates of toll, to-wit: For each wagon drawn by one span of animals, four dollars, for each additional animal or span of animals, one dollar; for each horse and rider and each animal packed, one dollar and fifty cents; for each loose animal, cattle, horses and mules, one dollar; hogs, sheep and goats, twenty-five cents; footmen, fifty cents.

SEC. 3. Said Ray W. Andrews, his associates and successors, shall be held and obligated from the first day of March, A. D. 1868, of each year until the river shall be so low that it can be forded with ease and safety, to keep said ferry in good, safe and sufficient order and condition for use at all reasonable hours, and shall keep a competent ferryman and sufficient number of men, who shall transport persons and property across said river promptly and without unnecessary delay, at all reasonable hours, under penalty of all damages sustained and the forfeiture of his charter.

SEC. 4. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over said ferry as they are authorized to exercise over other licensed ferries; and they may at their discretion, on a petition signed by fifty bona fide citizens of the county in which said ferry is located, alter and fix the rates of toll at the expiration of two years after the passage of this act, [which] may be altered, modified or repealed at any subsequent session of the Legislature.

SEC. 5. This act to take effect and be in force from and after its passage.

[Approved December 24, 1867.]

HeinOnline -- 1867 128 1867

AN ACT to define the Boundary lines of Choteau County, and to locate the County Seat thereof.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That all that portion of the Territory of Montana embraced in the following described boundaries, shall be known as the County of Choteau, to-wit: Commencing at a point in the middle of the main channel of the Missouri river opposite to the mouth of Deep creek, thence due east to intersect with the one hundred and ninth meridian of longitude; thence due north along the one hundred and ninth meridian of longitude to the intersection of the forty-ninth parallel of latitude; thence west along the forty-ninth parallel of latitude to the one hundred and twelfth meridian of longitude; thence south along said one hundred and twelfth meridian of longitude to the middle of the main channel of the Sun river; thence down the middle of the main channel of Sun river to the middle of the main channel of the Missouri river; thence up said Missouri river to the place of beginning; and the county seat of said Choteau county is hereby located at Benton City.

SEC. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act to take effect from and after its passage and approval.

[Approved December 12, 1867.]

AN ACT amendatory of an act entitled, "An Act to define the boundary line of Deer Lodge, Beaverhead and Madison Counties," approved Dec. 10, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That section three (3) of said act be and is hereby amended so as to read after the words "Beaverhead county" in the fifth (5th) line of said section three (3) "thence northernly in a di-

1868 4th Regular.pdf

rect line to the summit of Table Mountain; thence in a direct line to Parson's Bridge, on the Jefferson River."

SEC. 2. This act to take effect from and after its passage.

[Approved December 23, 1867.]

AN ACT changing the name of Edgerton County to Lewis and Clarke County.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the name of Edgerton county be, and is hereby changed to Lewis and Clarke county.

SEC. 2. That all laws referring to the aforesaid Edgerton county shall apply with equal and like force and effect to the said Lewis and Clarke county, and that all official acts of the officers of Edgerton county or of the officers of this Territory in anywise appertaining to the said Edgerton county, shall apply with equal force and effect to the said Lewis and Clarke county; provided that the name of Lewis and Clarke county shall hereafter be used in all official documents referring to that portion of the Territory of Montana, heretofore known and recognized as Edgerton county.

SEC. 3. All acts and parts of acts in anywise conflicting with this act are hereby repealed.

SEC. 4. This act to take effect and be in force from and after the 1st day of March, 1868.

[Approved December 20, 1867.]

AN ACT to dissolve the bonds of matrimony existing between Henry B. Steel and Roena Steel.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony existing between Henry

HeinOnline -- 1867 130 1867

1868 4th Regular.pdf

B. Steel and Roena A. Steel, his wife, be and the same are hereby dissolved.

SEC. 2. This act to be in force from and after its approval by the Governor.

[Approved December 18, 1867.]

AN ACT to dissolve the bonds of matrimony existing between Mary E. Launier and Amos Launier.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony heretofore and now existing between Mary E. Launier and Amos Launier, her husband, be and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 18, 1867.]

AN ACT to dissolve the bonds of matrimony between John W. Winslett and Louisa M. Winslett.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the bonds of matrimony heretofore and now existing between John M. Winslett and Louisa M. Winslett, his wife, be and the same are hereby dissolved.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved December 24, 1867.]

HeinOnline -- 1867 131 1867

1868 4th Regular.pdf

AN ACT divorcing Rosa V. Vanvlerden and Abram H. Vanvlerden.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony heretofore existing between Rosa V. Vanvlerden and Abram H. Vanvlerden be and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 21, 1867.]

AN ACT to dissolve the bonds of matrimony existing between George W. Hacker and Mary Jane Hacker.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony existing between George W. Hacker and Mary Jane Hacker, be and the same are hereby dissolved.

SEC. 2. This act to be in force from and after its approval by the Governor.

[Approved December 24, 1867.]

AN ACT to dissolve the bonds of matrimony between Edward McBroom and Margaret McBroom.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony existing between Ed-

HeinOnline -- 1867 132 1867

1868 4th Regular.pdf

ward McBroom and Margaret McBroom, his wife, be and the same are hereby dissolved.

SEC. 2. This act to take effect and be in force from and after its approval by the Governor.

[Approved December 24, 1867.]

AN ACT to dissolve the bonds of matrimony existing between G. Jules Germain and Marie Germain.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. That the bonds of matrimony existing between G. Jules Germain and Marie Germain, be and the same are hereby dissolved.

SEC. 2. This act shall be in force and take effect from and after its passage.

[Approved December 23, 1867.]

HeinOnline -- 1867 133 1867

1868 4th Regular.pdf

HeinOnline -- 1867 134 1867

1868 4th Regular.pdf

CIVIL PRACTICE ACT.

AN ACT to regulate proceedings in Civil Cases in the Courts of Justice of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana:

TITLE I.

OF CIVIL ACTION AND PARTIES THERETO.

SEC. 1. *One form of civil action only.*
2. *Parties to an action, how designated.*
3. *Special issues not made by the pleadings how tried.*
4. *Action to be in the name of real party in interest.*
5. *Assignment of an action not to prejudice.*
6. *Executor or trustee may sue without the persons beneficially interested.*
7. *When married woman is a party, actions by and against.*
8. *If husband and wife sued together, wife may defend.*
9. *Infant to appear by guardian.*
10. *Guardian, how appointed.*
11. *Father or mother may maintain action for injury to child.*
12. *Who may be joined as defendants.*
13. *Who may be joined as plaintiffs.*
14. *Parties in interest, when to be joined, when one or more may sue or defend for the whole.*
15. *One action may include different parties to commercial paper.*
16. *Action, when not to abate by death, marriage or other disability.*
17 *Court, when to decide controversy, or to order other parties to be brought in.*

SECTION 1. There shall be in this Territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

1868 4th Regular.pdf

SEC. 2. In such action the party complaining shall be known as the plaintiff and the adverse party as the defendant.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration before due.

SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person, with whom or in whose name, a contract is made for the benefit of another.

SEC. 7. When a married woman is a party, her husband shall be joined with her, except that: First, When the action concerns her separate property, she may sue alone. Second, When the action is between herself and her husband she may sue or be sued alone.

SEC. 8. If a husband and wife be sued together, the wife may defend for her own r ht.

SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or a probate judge.

SEC. 10. The guardian shall be appointed as follows: First, When the infant is plaintiff, upon the application of the infant; if he be of the age of fourteen years or if under [that] age, upon the application of a relative or friend of the infant. Second, When the infant is dependent, upon the application of the infant; if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then, upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 11. A father, or, in case of his death or desertion of his family, the mother may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

SEC. 12. All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, except when otherwise provided in this act.

SEC. 13. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

SEC. 14. Of the parties to the action those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be ob-

HeinOnline -- 1867 136 1867

tained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

SEC. 15. Persons severally liable upon the same abligation or instrument including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

SEC. 16. An action shall not abate by the death or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or other disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party or the court may allow the person to whom the transfer is made to be substituted in the action.

SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without presence of other parties, the court shall order them to be brought in.

TITLE II.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

18. *Actions to be tried where subject matter situated.*
19. *Actions to be tried where cause of action arose.*
20. *Actions to be tried where parties reside.*
21. *Change of place of trial.*

SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action or some part thereof is situated, subject to the power of the court to change the place of trial as provided in this act: First, For the recovery of real property or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property. Second, For the partition of real property. Third, For the foreclosure of a mortgage of real property. Provided, That where such real property is situate partly in one county and partly in another, the plaintiff may select either of said counties; and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in the first, second and third subdivisions of this section.

SEC. 19. Actions for the following causes shall be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial: First, For the recovery of a penalty or forfeiture imposed by statute, except that

when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed. Second, Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

SEC. 20. In all other cases the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action; or, if none of the defendants reside in the Territory, or if residing in the Territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants may be about to depart from the Territory, such action may be tried in any county where either of the parties may reside, or service be had; subject however to the power of the court to change the place of trial, as provided in this act.

SEC. 21. The court may, on motion, change the place of trial in the following cases. First, when the county designated in the complaint is not the proper county; second, when there is reason to believe that an impartial trial cannot be had therein; third, when the convenience of witnesses and the ends of justice would be promoted by the change; fourth, when, from any cause, the judge is disqualified from acting in the action.

TITLE III.

OF THE MANNER OF COMMENCING CIVIL ACTION.

22. *Actions, how commenced.*
23. *Complaint, how endorsed; when summons may issue, how signed and issued.*
24. *Summons, requisites of.*
25. *Summons, time to answer.*
26. *Summons, what notice to be inserted therein.*
27. *Lispendens, filing and effect of.*
28. *Summons, by whom served.*
29. *Summons, how served.*
30. *Service of summons by publication when defendant cannot be found, &c.*
31. *Order of publication, what to contain.*
32. *Action against two or more defendants, how plaintiff may proceed.*
33. *Proof of service, how made.*
34. *Certificate or affidavit of service, what to state.*
35. *Jurisdiction, when court shall have acquired.*

SEC. 22. Civil actions in the district courts and probate courts shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons

thereon; provided, that, after the filing of the complaint, a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer shall be deemed a waiver of summons.

SEC. 23. The clerk shall endorse on the complaint the day, month and year the same is filed; and at any time within one year after the filing of the same the plaintiff may have a summons issued. The summons shall be signed by the clerk and directed to the defendant and be issued under the seal of the court.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of the summons, exclusive of the day of service, or that judgment by default will be taken against him according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint; and the clerk shall also endorse on the summons the names of the plaintiff's attorneys.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First, if the defendant is served within the county in which the action is brought, ten days; second, if the defendant is served out of the county but in the district in which the action is brought, twenty days; third, for all other cases, forty days.

SEC. 26. There shall also be inserted in the summons a notice, in substance as follows: First, in an action arising on contract for recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein if the defendant failed to answer the complaint; second, in other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

SEC. 27. In an action affecting the title to real property the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer or at any time afterwards, may file with the recorder of the county in which the property is situated a notice of the pendency of the action, containing the names of the parties to and the object of the action, and a description of the property in that county affected thereby, and the defendants may also in such notice state the nature and extent of the relief claimed in the answer. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found or by his deputy, or by a person specially appointed by him or appointed by a judge of the court in which the action is brought, or by any white male citizen of the United States over twenty-one years of age who is competent to be a witness on the trial of the action except as hereinafter provided. A copy of the complaint, certified by the clerk shall be served with the summons. When the summons is served by the sheriff or his de-

1868 4th Regular.pdf

puty, it shall be returned with the certificate or affidavit of the officer of its service and of the service of the copy of the complaint to the office of the clerk from which the summons issued. When the summons is served by any other person as before provided, it shall be returned to the office of the clerk from which it issued with the affidavit of such person of its service and of the service of a copy of the complaint. If there be more than one defendant in the action and such defendants reside within the county, a copy of the complaint need be served on only one of the defendants.

SEC. 29. The summons shall be served by delivering a copy thereof as follows: First, if the suit be against a corporation, to the president or other head of the corporation, secretary, cashier or managing agent thereof; second, if the suit be against a foreign corporation or a non-resident joint stock company or association doing business within this Territory, to an agent, cashier or secretary thereof; third if against a minor under the age of fourteen years, to such minor personally and also to his father, mother or guardian, or if there be none in the Territory, then to any person having the care or control of such minor or with whom he resides or in whose service he is employed; fourth, if against a person judicially declared to be of unsound mind or incapable of conducting his own affairs and for whom a guardian has been appointed, to such guardian. In all other cases, to the defendant personally.

SEC. 30. When the person on whom the service is to be made resides out of the Territory or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the summons, the service of summons, and the fact shall appear by affidavit to the satisfaction of the court or a judge thereof, or a probate judge, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by publication of the summons.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; provided, that publication against a defendant residing out of the Territory or absent therefrom, shall be not less than three months. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the postoffice, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory shall be equivalent to publication and deposit in the postoffice. In either case, the service of summons shall be deemed complete at the expiration of the time prescribed by the order for publication. In actions upon contracts for the direct payment of money, the court in its discretion may, instead of ordering publication, or may after publication, appoint an attorney to appear for the non-

HeinOnline -- 1867 140 1867

resident, absent or concealed defendant and conduct the proceedings on his part.

SEC. 32. Where the action is against two or more defendants and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First, if the action be against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise direct; and if he recover judgment it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendants served; second, if the action be against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 33. Proof of the service of the summons shall be as follows: First, if served by the sheriff or his deputy the affidavit or certificate of such sheriff or deputy; second, if by any other person, his affidavit thereof; third, in case or publication, the affidavit of the printer, or his foreman, or his principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the postoffice, if the same shall have been deposited; fourth, the written admission of defendant.

SEC. 34. In case of service otherwise than by publication, the certificate shall state the time and place of the service.

SEC. 35. From the time of the service of the summons and copy of complaint in a civil action, the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

TITLE IV.

OF THE PLEADINGS IN CIVIL ACTIONS.

36. *Form of pleadings.*
37. *Sufficiency of pleadings, how determined.*
38. *Pleadings on part of plaintiff and defendant.*
39. *Complaint, what to contain.*
40. *When defendant may demur.*
41. *Demurrer must specify grounds of objection.*
42. *Demurrer and answer.*
43. *Amended complaint, how filed and served.*
44. *Objection not appearing on complaint.*
45. *Objection, when deemed waived.*
46. *Answer, what to contain.*
47. *Counter Claim.*
48. *Cross demands.*
49. *Several defenses.*
50. *Demurrer to answer and sham and irrelevant defense.*
51. *Pleadings to be verified.*
52. *Pleadings, when not to be verified.*

1868 4th Regular.pdf

53. *Copy of instrument, when deemed admitted as genuine.*
54. *When deemed not admitted.*
55. *Pleadings, how and by whom verified.*
56. *Items of account, bills of particulars.*
57. *Irrelevant or redundant matter.*
58. *In real actions, how to describe property.*
59. *Judgments, how to be pleaded.*
60. *Conditions precedent, how to be pleaded.*
61. *Private statutes, how to be pleaded.*
62. *Libel and slander, how stated in the complaint.*
63. *Answer in such cases.*
64. *What causes of action may be joined.*
65. *Allegation not denied, when to be deemed true.*
66. *What is a material allegation.*
67. *Amendments of course, and effect of demurrers.*
68. *Who may enlarge, time to plead, correct mistakes, amend and relieve from judgment in certain cases.*
69. *Fictitious name.*
70. *Pleadings, how constructed.*
71. *No error or defect to be regarded unless it affects the substantial rights.*

SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses for the judgment of the court.

SEC. 37. All the forms of pleadings in civil actions and the rules by which the sufficiency of the pleadings shall be determined shall be those prescribed in this act.

SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, demurrer or replication to the defendant's answer, and the only pleadings on the part of defendant shall be a demurrer to the complaint or a demurrer to the replication or an answer to the complaint. The demurrer or answer of the defendant and the demurrer or replication of the plaintiff, shall be filed with the clerk and a copy thereof served on the adverse party or his attorney; provided, the adverse party or his attorney live within the county where the action is pending.

SEC. 39. The complaint shall contain: First, the title of the action specifying the name of the court and the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant; second, a statement of the facts constituting the cause of action in ordinary and concise language; third, a demand of the relief which plaintiff claims, to the recovery of money or damages be demanded, the amount thereof shall be stated.

SEC. 40. The defendant may demur to the complaint within the time required in summons to answer when it appears upon the face thereof, either: First, that the court has no jurisdiction of the person of the defendant or the subject of the action; or second, that the plaintiff has no legal capacity to sue; or third, that there is another action pending between the same parties for the same cause; or fourth, that there is a defect or misjoinder of parties, plaintiff or defendant; or fifth, that several causes of action have been improperly

HeinOnline -- 1867 142 1867

1868 4th Regular.pdf

united; or sixth, that the complaint does not state facts sufficient to constitute a cause of action; or seventh, that the complaint is ambiguous, unintelligible or uncertain.

SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken, unless to do so, it may be disregarded.

SEC. 42. The defendant may demur to the whole complaint or to one or more of several causes of action stated therein and answer the residue, or may demur [and] answer at the same time.

SEC. 43. If the complaint be amended a copy of the amendments shall be filed, or the court may in its discretion require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

SEC. 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 45. If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 46. The answer of the defendant shall contain: First, if the complaint be verified, a specific denial to each allegation to the complaint controverted by the defendant or a denial thereof, according to his information and belief; if the complaint be not verified then a general denial to each of said allegations, but a general denial shall only put in issue the material and express allegations of the complaint; second, a statement of matter in avoidance, a counter claim constituting a defense, or the subject matter of cross complaint which may entitle a defendant to relief against the plaintiff alone or against a defendant or co-defendant.

SEC. 47. The counter claim mentioned in the last section shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First, a cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the plaintiff's claim or defendant's defense, or connected with the subject of the action; second, in an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action.

SEC. 48. When cross demands have existed between persons under such circumstances that if one had brought an action against the other, a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other; but the two demands shall be deemed compensated so far as they equal each other.

SEC. 49. The defendant may set forth, by answer, as many de-

fenses and counter claims as he may have; they shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished.

SEC. 50. When the answer contains new matter, the plaintiff may within the number of days in which the defendant is by the summons required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demurr to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also within the same time demurr to one or more defenses set up in the answer; sham and irrelevant answers and defenses and so much of any answer as may be irrelevant, redundant and immaterial, may be stricken out on motion and upon such terms as the court in its discretion may impose.

SEC. 51. Every pleading shall be subscribed by the party or his attorney and shall be verified by oath, except as provided in the next section.

SEC. 52. The verification of the answer required in the last section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony or misdemeanor.

SEC. 53. When an action is brought upon a written instrument and the complaint contains a copy of such instrument or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted unless the answer denying the same shall be verified.

SEC. 54. When the defense to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the clerk, five days before the commencement of the term at which the action is to be tried, an affidavit denying the same: Provided, that the due execution of the instrument shall not be deemed to be admitted by a failure to controvert the same on oath, as prescribed in this and the last preceding section, unless the party controverting the same is, upon demand, permitted to inspect the original [before] filing of such answer.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to matters which are therein stated on his information or belief, and as to those matters that he believes to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in his affidavit the reason why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the Territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts, except that in actions

HeinOnline -- 1867 144 1867

1868 4th Regular.pdf

posecuted by the district attorney in behalf of the Territory, the pleading need not in any case be verified.

SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party within five days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or judge thereof, or a probate judge, may order a further account when the one delivered is too general or is defective in any particular.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court on motion of any person aggrieved thereby.

SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint.

SEC. 59. In pleading a judgment, or other determination of a court, or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted; the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

SEC. 63. In the actions mentioned in the last section the defendant may in his answer allege both the truth of the matter charged as defamatory; and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 64. The plaintiff may unite several causes of action in same complaint when they all arise out of: First, Contracts, express or implied. Second, Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same. Third, Claims to recover specific personal property, with or without damages, for the withholding thereof. Fourth, Claims against a trustee by virtue of a contract, or by operation of law. Fifth, Injuries to character. Sixth, Injuries to person. Seventh, Injuries to property,

HeinOnline -- 1867 145 1867

but the causes of action so united shall all belong to only one of these classes; and shall effect all the parties to the action, and not require different places of trial, and shall be separately stated: Provided, however, that an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to person.

SEC. 65. Every material allegation of the complaint or cross complaint not controverted by the answer thereto, shall, for the purposes of the action, be taken as true; the statement of in matters avoidance shall on trial be deemed controverted by the adverse party.

SEC. 66. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleadings without leaving it insufficient.

SEC. 67. After demurrer, and before the trial of the issue of law therein, the pleadings demurred to may be amended as of course, and without costs, by filing the same as amended, and serving a copy thereof on the adverse party or his attorney within ten days, who shall have ten days thereafter in which to demur or answer thereto; but a party shall not so amend more than once. A demurrer shall not be deemed waived by the filing of an answer at the same time of filing the demurrer; and when the demurrer to a complaint is overruled and there is no answer filed, the court may, upon terms, allow an answer to be filed. If the demurrer to the answer be overruled, the facts alleged in the answer shall be considered denied, to the extent mentioned in section sixty-five. Where circumstances occurring subsequently to the commencement of the action render it proper, the same may be presented [by] supplemental pleadings, and issue taken thereon in the same manner as in the case of original pleadings.

SEC. 68. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading, or proceeding by adding or striking out the name of any party; or by correcting a mistake in the name of a party; or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer; or demurrer to an answer filed. The court may likewise, upon affidavit, showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceedings in any other particulars; and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceedings taken against him through his mistake, inadvertance, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judges at chambers, the party aggrieved has been unable to apply for the relief sought, during the term at which such judgment, order, or proceedings complained of was taken, the court or judge at chambers, in vacation may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When from any cause the summons and copy of the complaint in an action have not been personally served on the defendant, the court may allow on such terms as may

HeinOnline -- 1867 146 1867

be just, such defendant or his legal representatives at any time within six months after the rendition of any judgment in such action to answer to the merits of the original action.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered the pleadings or proceedings may be amended accordingly.

SEC. 70. In the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed with a view to substantial justice between the parties.

SEC. 71. The court shall in every stage of an action disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

TITLE V.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

72. *No person to be arrested except as prescribed by this act.*
73. *Cases in which defendant may be arrested.*
74. *Order for arrest, by whom made.*
75. *Affidavit to obtain order, what to contain.*
76. *Security by plaintiff before order of arrest.*
77. *Order, when made and its form.*
78. *Affidavit and order to be delivered to the sheriff and copy to defendant.*
79. *Arrest, how made.*
80. *Defendant to be discharged, on bail or deposit.*
81. *Bail, how given.*
82. 83. *Surrender of defendant.*
84. *Bail, how proceeded against.*
85. *Bail, how exonerated.*
86. *Delivery of undertaking to plaintiff, and its acceptance or rejection by him.*
87. *Notice of justification, new undertaking, if other bail.*
88. *Qualifications of bail.*
89. *Justification of bail.*
90. *Allowance of bail.*
91. *Deposit of money with the sheriff.*
92. *Payment of money in court by sheriff.*
93. *Substituting bail for deposit.*
94. *Money deposited, how applied or disposed of.*
95. *Sheriff, when liable as bail and his discharge from liability.*
96. *Proceedings on judgment against sheriff.*
97. *Motion to vacate order of arrest or reduce bail, affidavits on motion.*
98. *When the order vacated or bail reduced.*

SEC. 72. No person shall be arrested in a civil action, except as prescribed in this act.

SEC. 73. The defendant may be arrested as hereinafter prescribed, in following cases arising after the passage of this act. First, In action for the recovery of money or damages on a cause of action arising upon contract express or implied, when the defendant is about to depart from the Territory, with intent to defraud his creditors, or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another. Second, In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity; or for misconduct or neglect in office; or in a professional employment, or for a willful violation of duty. Third, In an action to recover possession of personal property, unjustly obtained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff. Fourth, When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought. Fifth, When the defendant has removed or disposed of his property, or is about to do so with intent to defraud his creditors.

SEC. 74. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought or from a probate judge.

SEC. 75. The order shall be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists; and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive, or upon information and belief, and when upon information and belief it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court where the action is brought.

SEC. 76. Before making the order the judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and house-holder or freeholder within the Territory, and worth double the sum specified in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

SEC. 77. The order may be made to accompany the summons, or at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to ar-

HeinOnline -- 1867 148 1867

rest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also if desired, a copy of the order of arrest.

SEC. 79. The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

SEC. 80. The defendant at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

SEC. 81. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 82. At any time before judgment or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

SEC. 83. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated; provided, such arrest, delivery or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

SEC. 86. Within the time limited for that purpose the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to

1868 4th Regular.pdf

have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

SEC. 87. Within five days after receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the place of residence and occupation of the latter) before a judge of the court, or clerk thereof, or probate judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

SEC. 88. The qualifications bail shall be as follows: First, Each of them shall be a resident and householder, or freeholder within the county. Second, Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 89. For the purpose of justification, each of the bail shall attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail if required by the plaintiff.

SEC. 90. If the judge or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving [bail]. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

SEC. 92. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant, For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

SEC. 93. If money be deposited as provided in the last two sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 94. Where money shall have been deposited, if it remain on

HeinOnline -- 1867 150 1867

deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under the direction of the court, refund to him the whole sum deposited and remaining unapplied.

SEC. 95. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

SEC. 96. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond, for the recovery of the whole or any deficiency as in other cases of delinquency.

SEC. 97. A defendant arrested may at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs in addition to those on which the order of arrest was made.

SEC. 98. If upon such application it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

99. *Delivery of personal property, when it may be claimed.*
100. *Affidavit and its requisites.*
101. *Requisition to sheriff to take and deliver the property.*
102. *Security on part of the plaintiff and justification.*
103. *Exception to sureties and proceedings thereon, or on failure to except.*
104. *Defendant, when entitled to re-delivery.*
105. *Justification of defendant's sureties.*
106. *Qualification and justification of sureties.*
107. *Property, how taken when concealed in building or inclosure.*
108. *Property, how kept.*
109. *Claim of property by third person.*
110. *Notice and affidavit, when and where to be filed.*

SEC. 99. The plaintiff, in an action to recover possession of per

1868 4th Regular.pdf

sonal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

SEC. 100. Where a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First, That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof. Second, That the property is wrongfully detained by the defendant. Third, The alleged cause of the detention thereof according to his best knowledge, information and belief. Fourth, That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by the statute exempt from such seizure; and, fifth, the actual value of the property.

SEC. 101. The plaintiff or his attorney may thereupon by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

SEC. 102. Upon receipt of the affidavit and notice with a written undertaking executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit if it be in possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest postoffice, directed to the defendant.

SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to

HeinOnline -- 1867 152 1867

1868 4th Regular.pdf

the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or clerk, in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. The qualifications of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

SEC. 107. If the property, or any part thereof be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary he may call to his aid the power of his county.

SEC. 108. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 109. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

SEC. 110. The sheriff shall file the notice, undertaking and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending; within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTION.

111. *Injunction, what is and who may grant it.*
112. *When it may be granted.*

HeinOnline -- 1867 153 1867

1868 4th Regular.pdf

113. *At what time it may be granted and what is required to obtain it.*
114. *Injunction after answer.*
115. *Security upon injunction, damages, how ascertained.*
116. *Order to show cause why injunction should not be granted.*
117. *Injunction to suspend business of a corporation, how and by whom granted.*
118. *Motion to vacate or modify injunction.*
119. *When to be vacated or modified.*

SEC. 111. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought or by a judge thereof, and when made by a judge may be enforced as the order of the court.

SEC. 112. An injunction may be granted in the following cases: First, when it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually; second, when it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff; third, when it shall appear during the litigation that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards before judgment upon affidavits. The complaint in the one case and the affidavits in the other shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff or some one in his behalf that he, the person making the oath, has read the complaint or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit a copy of the affidavit shall be served with the injunction.

SEC. 114. An injunction shall not be allowed after the defendant has answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

SEC. 115. On granting injunnction the court or judge shall require, except where the people of the Territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

HeinOnline -- 1867 154 1867

1868 4th Regular.pdf

SEC. 116. If the court or judge deem it proper that the defendant or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted, and the defendant may, in the meantime, be restrained.

SEC. 117. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof; nor shall it be granted without due notice of the application therefor, to the proper officers or managing agent of the corporation, except when the people of this Territory are a party to the proceedings.

SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on part of defendant, with or without the answer. If the application be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

SEC. 119. If upon such application it satisfactorily appears that there is not sufficient ground for the injunction it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

ATTACHMENT.

120. *Attachment, when and in what cases may issue.*
121. *Affidavit for attachment, what to contain.*
122. *Undertaking on attachment.*
123. *Writ, to whom directed and what to state.*
124. *Shares of stock and debts due defendant, how attached and disposed of.*
125. *How real and personal property shall be attached.*
126. *Attorney to give written instructions to sheriff what to attach.*
127. *Garnishment, when garnishee liable to plaintiff.*
128. *Citation to garnishee to appear before a court or judge.*
129. *Inventory, how made; party refusing to give memorandum may be compelled to pay costs.*
130. *Perishable property, how sold; accounts without suit to be collected.*
131. *When property claimed by a third party, how tried.*
132. *If plaintiff obtains judgment, how satisfied.*
133. *When there remains a balance due, how collected.*
134. *When suit may be commenced on the undertaking.*
135. *If defendant recover judgment, what the sheriff is to deliver.*

HeinOnline -- 1867 155 1867

1868 4th Regular.pdf

136. *Proceedings to release attachment, before whom taken.*
137. *Attachment, in what cases it may be released and upon what terms.*
138. *When a motion to discharge attachment may be made and upon what grounds.*
139. *When motion made on affidavit it may be opposed by affidavit.*
140. *When writ shall be discharged.*
141. *When writ to be returned. To what debts these sections apply.*

SEC. 120. The plaintiff at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment as hereinafter provided in the following cases: First, in an action upon a contract, express or implied, for the direct payment of money, which contract is made or is payable in this Territory, and is not secured by a mortgage, lien, or pledged upon real or personal property; or if so secured, that such security has been rendered nugatory by the act of the defendant; second, in an action upon a contract, express or implied, against a defendant not residing in the Territory.

SEC. 121. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing: First, that the defendant is indebted to the plaintiff; specifying the amount of such indebtedness over and above all legal set-offs or counter claims upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this Territory, and that the payment of the same has not been secured by any mortgage, lien or pledge upon real or personal property; second, that the defendant is indebted to plaintiff (specifying the amount of such indebtedness as near as may be over and above all legal set-offs or counter claims) and that the defendant is a non-resident of the Territory; third, that the sum for which the attachment is asked is an actual bona fide existing debt due and owing from the defendant to plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor or creditors of the defendant.

SEC. 122. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff in a sum not less than two hundred dollars nor exceeding the amount claimed by the plaintiff, with sufficient sureties to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

SEC. 123. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant [deposit

HeinOnline -- 1867 156 1867

1868 4th Regular.pdf

the amount or] give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case, to take such undertaking, several writs may be issued at the same time to the sheriffs of different counties.

SEC. 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 125. The sheriff to whom the writ is directed and delivered, shall eexcute the same without delay; and if the undertaking mentioned in section one hundred and twenty-three be not given as follows: First, real property, standing upon the records of the county in the name of the defendant shall be attached by leaving a copy of the writ with an occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the recorder of the county; second, real property, or any interest therein belonging to the defendant and held by any other person, or standing upon the records of the county in the name of any other person, shall be attached by leaving such person or his agent a copy of the writ and a notice that such real property (giving a description thereof) and any interest therein belonging to the defendant are attached pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county, and leaving a copy of such writ and notice with an occupant of such property; or if there be no occupant, by posting a copy thereof in a conspicuous place thereon; third, personal property capable of manual delivery, shall be attached by taking it into custody; fourth; stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary or cashier of the same, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of defendant is attached in pursuance of such writ; fifth, debts and credits and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts or having in his possession or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such suit.

SEC. 126. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

HeinOnline -- 1867 157 1867

1868 4th Regular.pdf

SEC. 127. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

SEC. 128. Any person owing debts to the defendant or having in his possession or under his control any credits, or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff upon such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

SEC. 129. The sheriff shall make a full inventory of the property attached and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request at the time of service the party owing the debt or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 130. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 131. If any personal property attached be claimed by a third party as his property, the sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect as in a case of a claim after levy upon execution.

SEC. 132. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or claimant, as hereinbefore provided, or subjected to executions on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose. First, by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or any debts or credits collected

HeinOnline -- 1867 158 1867

1868 4th Regular.pdf

by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell, under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

SEC. 133. If, after selling all the property attached by him, remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 134. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section one hundred and twenty-three or section one hundred and thirty-seven, or he may proceed as in other cases upon the return of an execution.

SEC. 135. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

SEC. 136. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, for an order to discharge the same upon the execution of the undertaking mentioned in the next section, and if the application be granted, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 137. Before the granting of such order the court or judge shall require an undertaking executed by the defendant and at least two sureties, residents and freeholders, or householders, in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will on demand, re-deliver such attached property so released, to the proper officer, to be applied to the payment of the judgment; and that in default thereof the defendant and sureties will, on demand, pay to plaintiff the full value of the property released. The court or judge granting such release may fix the sum for which the undertaking shall be executed; and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by three disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached shall not be released from the attachment without their justification, if the same be required.

HeinOnline -- 1867 159 1867

SEC. 138. The defendant may also, any time before the time for answering expires, apply on motion, upon reasonable notice, to the plaintiff to the court in which the action is brought, or to the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

SEC. 139. If the motion be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

SEC. 140. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 141. The sheriff shall return the writ of attachment with the summons, if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

CHAPTER V.

DEPOSIT IN COURT.

142. *Deposit in court.*
143. *Appointment of receiver.*

SEC. 142. When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which being the subject of litigation is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

SEC. 143. A receiver may be appointed by the court in which the action is pending or by a judge thereof: First, before judgment, provisionally on application of either party, when he establishes a prima facie right to the property, or to an interest in the property which is the subject of the action and which is in possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired; second, after judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal; and, third, in such other cases as are in accordance with the practice of courts of equity jurisdiction.

HeinOnline -- 1867 160 1867

1868 4th Regular.pdf

TITLE VI.

CHAPTER I.

JUDGMENT IN GENERAL.

144. *Judgment, definition of.*
145. *Judgment may be for or against one of the parties.*
146. *Judgment may be against one party and action proceed on to the others.*
147. *The relief to be awarded to the plaintiff.*
148. *Action may be dismissed or nonsuit entered.*
149. *Judgment on the merits, when.*

SEC. 144. A judgment is the final determination of the rights of the parties in the action or proceedings, and may be entered in a term or vacation.

SEC. 145. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 146. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

SEC. 147. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 148. An action may be dismissed or a judgment of a nonsuit entered in the following cases: First, by the plaintiff himself, at any time before trial, upon the payment of costs if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon; second, by either party, upon the written consent of the other; third, by the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal; fourth, by the court, when upon trial and before the final submission of the case the plaintiff abandons it; fifth, by the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two sub-divisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

HeinOnline -- 1867 161 1867

1868 4th Regular.pdf

SEC. 149. In every case, other than those mentioned in the last section, the judgments shall be rendered upon the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SEC. 150. Judgment may be had, if the defendant fail to answer the complaint, as follows: First, in an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such future time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant or against one or more of several defendants in the cases provided for in section thirty-two; second, in other actions, if no answer has been filed with the clerk, within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in whole or in part, the court may order the damages to be assessed by a jury; or if to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided; third, in actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, shall require the plaintiff or his agent to be examined on oath, respecting any payments that have been made to the plaintiff or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

OF ISSUE AND THEIR DISPOSITION.

151. *Issues defined, and their different kinds.*
152. *Issues of law, how raised.*
153. *Issues of fact, how raised.*
154. *Issues of law, how tried.*

HeinOnline -- 1867 162 1867

1868 4th Regular.pdf

155. *Issues of fact, how tried; when issues both of law and fact, the former to be first disposed of.*
156. *Clerk shall enter causes on calendar and to remain until disposed of.*
157. *Parties may bring issue to trial.*
158. *Motions to postpone on grounds of absence of evidence, requisites of.*

SEC. 151. An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds: First, of law; and second, of fact.

SEC. 152. An issue of law arises upon a demurrer to the complaint or answer, [or] to some part thereof.

SEC. 153. An issue of fact arises: First, upon a material allegation in the complaint, controverted by the answer; and, second, upon new matters in the answer, except an issue of law is joined therein.

SEC. 154. An issue of law shall be tried by the court, unless it be referred upon consent as provided in chapter sixth of this title.

SEC. 155. An issue of fact shall be tried by a jury, unless a jury trial is waived or a reference be ordered as provided in this act. When there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

SEC. 156. The clerk shall enter causes upon the calendar of the court, according to the date of the issue. Causes once placed upon the calendar for a general or special term, if not tried or heard at such term shall remain upon the calendar from court to court until finally disposed of.

SEC. 157. Either party may bring the issue to a trial or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action or a verdict or a judgment as the case may require.

SEC. 158. A motion to postpone a trial on grounds of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

CHAPTER IV.

FORMATION OF THE JURY.

159. *Jury, how drawn and how many to consist of.*
160. *Jury to be sworn.*

HeinOnline -- 1867 163 1867

1868 4th Regular.pdf

161. *Challenges, each party entitled to four peremptory challenges.*
162. *Grounds of challenges.*
163. *To be tried by the Court, witnesses may be examined.*

SEC. 159. When the action is called for trial by jury the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballot becomes exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff shall summon, under the direction of the court, from the citizens of the vicinity and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 160. As soon as the jury is completed an oath or affirmation [shall be administered] to the jurors, in substance: That they, each of them, will well and truly try the matter at issue between ———— the plaintiff, and ———— the defendant, and a true verdict render according to the evidence.

SEC. 161. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be either peremptory or for cause; each party shall be entitled to four peremptory challenges.

SEC. 162. Challenges for cause may be taken on one or more of the following grounds: First, a want of any of the qualifications prescribed by statute to render a person competent as a juror; second, consanguinity or affinity within the third degree to either party; third, standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party, or a partner in business with either party; or being security on any bond or obligation or either party; fourth, having served as a juror or been a witness on a previous trial between the same parties for the same cause of action; fifth, interest on the part of juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation; sixth, having formed or expressed an unqualified opinion or belief as to the merits of the action; seventh, the existence of a state of mind in the juror evincing enmity against, or bias to, either party.

SEC. 163. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

HeinOnline -- 1867 164 1867

1868 4th Regular.pdf

ARTICLE II.

CONDUCT OF TRIAL.

164. *Poceedings in case a juror become sick.*
165. *Charge to jury; court shall furnish in writing, upon request, the points of law contained therein.*
166. *Jury may decide in court, or retire for deliberation. Duty of the officer in charge.*
167. *Jury may take with them certain papers.*
168. *May come into court for further instructions.*
169. *When jury are prevented from giving verdict, the cause may be again tried.*
170. *While jury are absent the court may adjourn from time to time. Sealed verdict. Final adjournment discharges the jury.*
171. *The jury, having agreed upon a verdict, shall declare the same.*
172. *Informal or insufficient verdict may be corrected under advice of the court.*
173. *Verdict shall be recorded in full in the minutes.*

SEC. 164. If, after the impanneling of a jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that [case] the trial may proceed with the other jurors, or a new jury may be sworn and the trial begun anew; or the jury may be discharged and a new jury then or afterwards impanneled.

SEC. 165. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all question of fact. The court shall furnish to either party at the time, upon request, a statement in writing of the points of law contained in the charge; or shall sign at the time, a statement of such points prepared by the counsel of either party.

SEC. 166. After hearing the charge, the jury may either decide in court, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

HeinOnline -- 1867 165 1867

 1868 4th Regular.pdf

SEC. 167. Upon retiring for deliberation the jury may take with them all papers (except depositions) which have been received as evidence in the case or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves, or any of them; but none taken by any other person.

SEC. 168. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court the information required shall ge given in presence of, or after notice to, the parties or counsel.

SEC. 169. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately or at a future time as the court shall direct.

SEC. 170. While the jury are absent the court may adjourn from time to time, in respect to other business; but it shall be nevertheless deemed open for every purpose connected with the cause submittd to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 171. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called and they shall be asked by the court or the clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

SEC. 172. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury under the advice of the court, or the jury may be again sent out.

SEC. 173. When the verdict is given and is not informal or insufficient, the clerk shall immediately record it in full in the minutes and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall again be sent out; but if no disagreement be expressed the verdict shall be complete and the jury shall be discharged from the case.

ARTICLE III.

THE VERDICT.

174. *General and special verdicts defined.*
175. *When general or special verdicts may be rendered.*

HeinOnline -- 1867 166 1867

1868 4th Regular.pdf

176. *Verdict in actions for the recovery of money on an established counter claim.*
177. *Verdict in actions for the recovery of specified personal property.*
178. *Entry of verdict.*

SEC. 174. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

SEC. 175. In an action for the recovery of money only, or specific property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict of finding shall be filed with the clerk, and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

SEC. 177. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of defendant, they also find that he is entitled to a return thereof, shall find the value of the property; and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

SEC. 178. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

HeinOnline -- 1867 167 1867

1868 4th Regular.pdf

CHAPTER V.

TRIAL BY COURT.

179. *When and how trial by jury may be waived.*
180. *Decision on trial of issue of fact by the Court.*
181. *A reference may be ordered, when.*

SEC. 179. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, and with the assent of the court; in other actions in the manner following: First, By failing to appear at the trial. Second, By written consent, in person, or by attorney, filed with the clerk. Third, By oral consent, in open court, entered in the minutes. The court may prescribe by rule what shall be deemed a waiver in other cases.

SEC. 180. Upon a trial of issue of fact by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing, and filed with the clerk. In the finding filed, the facts found and the conclusions of law shall be separately stated. in such cases no judgment shall be reversed on appeal for want of a finding in writing at the instance of any party who at the time of the submission of the cause shall not have requested a finding in writing and had such request entered in the minutes of the court; nor in cases tried by the court by a commissioner or a referee shall the judgment be reversed on appeal for defects in the finding unless exceptions be made in the court below for a defect in the finding; and in cases of exceptions for defective findings the particular point or issue upon which the party requires a finding to be made, or the particular defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or when tried by a commissioner or referee, to cause to be remedied by such commissioner or referee the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases; provided that such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding; provided, that when any cause is tried and submitted upon a written statement of facts, agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts; and judgment shall be pronounced thereon as upon a special verdict or finding of facts; and in such case, no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue; in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

HeinOnline -- 1867 168 1867

1868 4th Regular.pdf

SEC. 181. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

CHAPTER VI.

OF REFERENCES AND TRIALS BY REFEREES.

182. *Reference upon agreement of parties, in what cases.*
183. *Reference ordered on motion, in what cases.*
184. *Number of referees, qualifications, &c.*
185. *Either party may object; grounds of objection.*
186. *Objections, how disposed of.*
187. *Referees to report within ten days; effect of, how excepted to, etc.*

SEC. 182. A reference may be ordered upon the agreement of the parties filed with the clerk, or entered on the minutes. First, To try any or all of the issues in an action or proceeding whether of fact or of law, and to report a finding and judgment thereon. Second, To ascertain a fact necessary to enable the court to proceed and determine a case.

SEC. 183. When the parties do not consent, the court may, upon application of either, or if its own motion, direct a reference in the following cases: First, When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second, When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. Third, When a question of fact other than upon the pleadings, arises upon motion or otherwise, in any stage of the action; or Fourth, When it is necessary for the information of the court in a special proceeding.

SEC. 184. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county where the action or proceeding is triable, and against whom there is no legal objection, or the reference may be made to a court commissioner of the county where the cause is pending.

SEC. 185. Either party may object to the appointment of any person as referee, on one or more of the following grounds: First, A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second, Consanguinity or affinity within the third degree to either party. Third, Standing in the relation of guardian and ward, master and servant, employee and clerk, or principal and agent to either party; or being a member of the family of either party, or a partner in business with either party;

HeinOnline -- 1867 169 1867

 1868 4th Regular.pdf

or being security on any bond or obligation for either party. Fourth, Having served as a juror or been a witness on any trial between the same parties for the same cause of action. Fifth, Interest on the part of such person in the event of the action, or in the main question involved in the action. Sixth, Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh, The existence of a state of mind in such person evincing enmity against, or bias to, either party.

SEC. 186. The objection taken to the appointment of any person as a referee shall be heard and disposed of by the court. Affidavits may be read, and any person examined as a witness, as to such objections.

SEC. 187. The referees or commissioners shall report their findings in writing to the court, within ten days (or within such further time as may be allowed by the court) after the testimony shall have been closed and the facts found, and the conclusions of law shall be separately stated therein. The finding of the referees or commissioner upon the whole issue shall stand as the finding of the court, and upon filing of the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. The finding of the referees or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported shall have the effect of a special verdict.

CHAPTER VII.

EXCEPTIONS.

ARTICLE I.

188. *An exception, what is; what exceptions may be disregarded.*
189. *The point of exception shall be particularly stated, &c.*
190. *No particular form required.*
191. *When deemed excepted to.*

SEC. 188. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury; or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exceptions shall be regarded on a motion for a new trial, or an appeal, unless the exception be material and effect the substantial rights of the parties.

SEC. 189. The point of the exception shall be particularly stated and may be delivered in writing to the judge, or if the party require, it shall be written down by the clerk. When delivered in writing

HeinOnline -- 1867 170 1867

1868 4th Regular.pdf

or written down by the clerk, it shall be made conformable to the truth or be at the time corrected, until it is made so conformable. When not delivered in writing or written down as above, it may be entered in the judge's minutes, and afterwards settled in a statement of the case as provided in this act; provided, that if the judge shall in any case refuse to allow an exception in accordance with facts, any party aggrieved thereby may petition the Supreme Court for leave to prove the same, and shall have the right so to do in such mode and manner and according to such regulations as the Supreme Court may by rules impose.

SEC. 190. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

SEC. 191. When a case has been tried by the court or by the referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II.

NEW TRIALS.

192. *New trial defined.*
193. *When new trial may be granted.*
194. *When application for new trial; to be made upon affidavit or statement.*
195. *Notice of motion for new trial; when and how statements or affidavits to be made and filed.*
196. *Motion to be made without delay.*

SEC. 192. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court or referees.

SEC. 193. The former verdict or other decision may be vacated, and a new trial granted on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of said party: First, Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, ar abuse of discretion, by which either party was prevented from having a fair trial. [Second,] Mis-conduct of the jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict, or to a finding on any question or questions submitted to them by the court, by a resort to the determination of chance; such mis-conduct may be proved by the affidavits of any one or more of the jurors. [Third,] Accident or surprise, which ordinary prudence could not have guarded against. [Fourth,] Newly discovered

HeinOnline -- 1867 171 1867

evidence; material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial. [Fifth,] Excessive damages, appeared to have been given under the influence of passion or prejudice. [Sixth,] Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. [Seventh,] Error in law, occurring at the trial, and excepted to by the party making the application.

SEC. 194. When the application is made for a cause mentioned in the first, second, third and fourth sub-divisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared as provided in the next section.

SEC. 195. The party intending to move for a new trial shall give notice of the same as follows: When the action has been tried by a jury, within five days after the rendition of the verdict; and when tried by a commissioner, referee or by the court, within ten days after receiving written notice of the filing of the finding of the commissioner, referee or court; when written findings are filed by the court, or of the rendering of the decision of the court; when no findings are filed, provided the decision be rendered in open court, and if rendered at vacation, within ten days after receiving written notice of the filing thereof; and when amendments are filed, to remedy defects in the findings, within ten days after receiving written notice of the filing of such amendments. The notice shall designate generally, the grounds upon which the motion will be made. Within five days after giving such notice, or within such further time, not exceeding twenty days, as the court or judge thereof, or court commissioner may, by order grant, the said party shall prepare and file with the clerk, the affidavit or statement required by the last section. If no affidavit or statement be filed within five days after the notice, or within such further time as the parties may agree upon, or the court or judge thereof, or court commissioner, may by order grant, the right to move for a new trial shall be deemed waived. When the notice designates, as the ground upon which the motion will be made, the insufficiency of the evidence, to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates, as the ground of the motion, errors in law occurring at the trial, and excepted to by the moving party; the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of evidence or reference thereto as may be necessary to explain the particular points thus specified and no more. Such statement, when not agreed to by the adverse party, shall be settled by the judge, upon notice. When agreed to, it shall be accompanied by the certeficate of the parties or their ottorneys that the same has been agreed upon and is correct. When settled by the judge, the same shall be accompanied with his certificate that the same has been allowed by him and is correct. On the argument reference may also be made to the pleadings, depositions and documentary evidence on file and minutes of the court. If the application be made upon affidavits filed, the adverse party may use coun-

ter affidavits on the hearing. Any counter affidavits shall be filed with the clerk one day at least previous to the hearing. The affidavits and counter affidavits or the statement thus used in connection with such pleadings, depositions and minutes of the court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits it shall be sufficient for the judge or clerk to endorse them at the time as having been read or referred to on the hearing. To identify any depositions or minutes of the court, read or referred to on the hearing it shall be sufficient that the judge designate them in his certificate as having been thus read or referred to.

SEC. 196. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the court or judge granting or refusing a new trial shall state in writing the grounds upon which the same is granted or refused.

CHAPTER VIII.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

197. *Judgment to be entered in twenty-four hours, &c.*
198. *Case may be brought before court for argument.*
199. *When counter claim established exceeds plaintiff's demand.*
200. *In replevin, judgment to be in the alternative, and with damages.*
201. *Judgment book to be kept by the clerk.*
202. *If a party die after a verdict, judgment may be entered, but not to be a lien.*
203. *Judgment roll, what to constitute.*
204. *Judgment lien, when it begins and when it expires.*
205. *Docket, how kept and what to contain.*
206. *Docket to be open for inspection without charge.*
207. *Transcript to be filed in any county and judgment to become a lien there.*
208. *Satisfaction of a judgment, how made.*

SEC. 197. When trial by jury has been had, judgment shall be entered by the clerk in conformity to the verdict within twenty-four hours after the rendition of the verdict unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 198. When the case is reserved for argument or further consideration as mentioned in the last section, it may be brought by either party before the court for argument.

SEC. 199. If a counter claim established at the trial exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled

to any other affirmative relief, judgment shall be given accordingly.

SEC. 200. In an action to recover the possession of personal properay, judgment for the plaintiff may be for the possession or the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 201. The clerk shall keep among the records of court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted or other determination of the action.

SEC. 202. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

SEC. 203. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll: First, in case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed upon the complaint, that the default of the defendant in not answering was entered and a copy of the judgment; second, in all other cases the summons, pleadings, verdict of the jury, or finding of the court, commissioner or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment and copies of any orders relating to a change of parties.

SEC. 204. Immediately after filing a judgment roll, the clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until said lien expires. The lien shall continue for two years unless the judgment be previously satisfied.

SEC. 205. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; Judgment creditors; Judgment time of entry; where entered into the judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket, under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

SEC. 206. The docket kept by the clerk shall be open at all time during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such manner as to facilitate their inspection.

HeinOnline -- 1867 174 1867

SEC. 207. A transcript of the original docket certified by the clerk may be filed with the recorder of any other county, and from the time of filing the judgment shall become a lien upon all the real property of judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 208. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within one year after the judgment by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment; and, upon motion, the court may compel it or may order the entry of satisfaction to be made without it.

TITLE VII.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTION.

CHAPTER I.

THE EXECUTION.

209. *Within what time an execution may issue.*
210. *Who may issue, its form, to whom directed, what it shall require.*
211. *When all the defendants were not served with summons, what to direct.*
212. *When made returnable.*
213. *Money judgments and others, how enforced.*
214. *Repealed.*
215. *When execution against the property of a party after death.*
216. *Execution may issue to the sheriff of any county, when against the property of defendant, otherwise when it requires the delivery of real and personal property.*
217. *What shall be liable to be seized in execution, not to be effect until a levy be made.*
218. *When property is claimed by a third party, how the right of property to be tried.*
219. *What property shall be exempt from execution.*
220. *Writ, how executed.*
221. *Notice of sale under execution, how given.*
222. *Selling without notice, what penalty attached.*
223. *Sales, how conducted; neither the officer conducting nor his deputy to be a purchaser; real and personal property, how sold; judgment debtor, if present, may direct order of sale, and the officer shall follow his directions.*

224. *If purchaser refuse to pay purchase money, what proceedings.*

225. *Court of justice may proceed in a summary manner against a purchaser refusing to pay; officer may refuse such purchaser's bid after.*

226. *These two sections not to make officer liable beyond a certain amount.*

227. *Personal property, capable of manual delivery, how delivered to purchaser.*

228. *Personal property not capable of manual delivery, how sold and delivered.*

229. *Real property, when absolute sale, or not in the latter case, what the certificate must contain.*

230. *Real property so sold, by whom it may be redeemed.*

231. *When it may be redeemed; and redemption money.*

232. *When judgment debtor or redemption may redeem.*

233. *In cases of redemption, to whom the payments are to be made.*

234. *What must a redemptioner do, in order to redeem.*

235. *Until the expiration of redemption time, court may restrain waste on the property; what shall be considered waste.*

236. *Rents and profits, who is to receive.*

237. *If purchaser of real property be evicted through irregularities in the sale, what shall he recover and from whom. When judgment to be revived. Petition for the purpose, how and by whom made.*

SEC. 209. The party in whose favor judgment is given may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter.

SEC. 210. The writ of execution shall be issued in the name of the people of the Territory of Montana, sealed with the seal of the court and subscribed by the clerk, and shall be directed to the sheriff; and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed in the name of the people of the Territory of Montana; and if it be for money, the amount thereof and the amount actually due thereon, and shall require the sheriff substantially as follows: First, If it be against the property of the judgment debtor it shall require the sheriff to satisfy the judgment with interest out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property, or if the judgment be a lien upon real property, then out of

HeinOnline -- 1867 176 1867

1868 4th Regular.pdf

the real property belonging to him on the day when the judgment was docketed; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day or any time thereafter. Second, If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment with interest out of such property. Third, If it be against the person of the judgment debtor it shall require the sheriff to arrest such debtor and commit him to the jail of the county, until he pay the judgment, with interest, or be discharged according to law. Fourth, If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment out of the personal property against whom it was rendered and the value of the property for which the judgment was rendered to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

SEC. 211. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

SEC. 212. The execution may be made returnable, at any time not less than ten nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed; when the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the execution and return thereto, at large, and certify the same under his had as true copies, in a book to be called the "Execution Book," which book shall be indexed with the names of plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours, for the inspection of the public, without charge, and shall be evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, lost or mutilated.

213. When the judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced by a writ of execution; when it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby by law to obey the same; obedience thereto may be enforced by the court; and after a final judgment of partition, the court shall have power to enforce a severance of the possession.

SEC. 214. In all cases, other than the recovery of money, the judgment may be enforced or carried into execution after the lapse

HeinOnline -- 1867 177 1867

 1868 4th Regular.pdf

of five years, from the date of its entry, by leave of the court, upon motion or by judgment for the purpose, founded on supplemental pleadings.

SEC. 215. Notwithstanding the death of a party after judgment, execution thereon may be issued; in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists; [and] in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered, in the same manner and with the same effect as if he were still living.

SEC. 216. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time, to different counties.

SEC. 217. All goods, chattels, moneys and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust shall be returned by the officer as so much money collected, at its current value, without exposing the same to sale until a levy; property shall not be affected by the execution.

SEC. 218. If the property levied upon be claimed by a third person as his property, the sheriff shall summon from his county six persons qualified as jurors, between the parties, to try the validity of the claim. He shall also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the sheriff, and if their [verdict] be in favor of the claimant, the sheriff may relinquish the levy, unless the judgment creditor give him sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, and the witnesses, shall be paid by the claimant, if the verdict be against him; otherwise, by the plaintiff. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses.

SEC. 219. The following property shall be exempt from execution, except as herein otherwise specially provided: First, chairs, tables, desks and books, to the value of one hundred dollars, belonging to the judgment debtor; second, necessary household, table and kitchen furniture, belonging to the judgment debtor, including stoves, stove-pipes and stove furniture, wearing apparel, beds, bedding and bedsteads, and provisions actually provided for individual or family use sufficient for one month; third, the farming utensils or implements of husbandry of the judgment debtor; also two oxen or

HeinOnline -- 1867 178 1867

1868 4th Regular.pdf

two horses, or two mules, and their harness; four cows, one cart or wagon, and food for such oxen, horses, cows or mules, for one month; also, all seeds, grain or vegetables actually provided, reserved or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars; fourth, tools or implements of a mechanic or artisan, necessary to carry on his trade, the instruments and chest of a surgeon, physician surgeon, and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law libraries of attorneys and counsellors, and the libraries of ministers of the Gospel; fifth, the cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlasses, derrick, cars, pumps, tools, implements and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hunded dollars; and two horses, mules or oxen, with their harness and food for such horses, mules or oxen for one month, when necessary to be used for any whim, windlass, derrick, car, pump or hoisting gear; sixth, two horses, two oxen or two mules, and their harness, and one cart or wagon, by the use of which a cartman, huckster, pedlar, teamster or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments used by a physician or surgeon, or minister of the Gospel, in making his professional visits, with food for such oxen, horses or mules for one month; seventh, all fire enengines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this Territory; eighth, all arms, uniforms and accoutrements required by law to be kept by any person; ninth, all court houses, jails, public offices and buildings, lots, grounds and personal property; the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the court house, jail and public offices belonging to any county of this Territory; and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations, and the lots and ground thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this Territory; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment, recovered for its price, or upon a mortgage thereon; tenth, the earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of the execution (or levy of attachment) when it shall be made to appear by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family residing in this Territory, supported wholly or in part by his labor. In addition to the property now exempted by law from sale or levy on execution, there shall be exempted one sewing machine of a value not exceeding one hundred dollars, in actual use by each debtor or family of the debtor.

HeinOnline -- 1867 179 1867

1868 4th Regular.pdf

SEC. 220. The sheriff shall execute the writ against the property of the judgment debtor or by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment or depositing the amount with the clerk of the court. Any excess in the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the sheriff's fees, within the view of the sheriff, he shall levy only on such part of the property as the judgment debtor may indicate; provided, that the judgment debtor be present at and indicate at the time of the levy such part; and provided, that the property indicated be amply sufficient to satisfy such judgment and fees.

SEC. 221. Before the sale of property on execution notice shall be given as follows: First, in case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place for such a time as may be reasonable considering the character and condition of the property; second, in case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place, not less than five nor more than ten days successively; third, in case of real property, by posting a similar notice particularly describing the property for twenty days successively in three public places of the township or city where the property is situated, and also when the property is to be sold; and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one.

SEC. 222. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party in addition to his actual damages, and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale) shall forfeit five hundred dollars.

SEC. 223. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those that attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property and consisting of several known lots or parcels, they shall be sold separately or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor if present at the sale may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

HeinOnline -- 1867 180 1867

1868 4th Regular.pdf

SEC. 224. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion, upon previous notice of five days, before any court or before any justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 225. Such court or justice shall proceed in a summary manner and give judgment and execution therefor forthwith, but the defendant may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay; and the officer may, in his discretion, thereafter reject the bid of any person refusing.

SEC. 226. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

SEC. 227. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 228. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 229. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title and interest and claim of the judgment debtor therefor; and when the estate [is less] than a leasehold of two years unexpired term, the sale shall be absolute; in all other cases the property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of sale containing: First, a particular description of the real property sold; second, the price bid for each distinct lot or parcel; third, the whole price paid; fourth, when subject to redemption it shall be so stated. A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

SEC. 230. Property sold, subject to redemption, as provided in the last section, or any part separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest: First, the judgment debtor or his successor in interest in the whole or any part of the property; second, a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that in which the property was sold. The persons mentioned in the second sub-division of this section are in this chapter termed redemptioners.

SEC. 231. The judgment debtor or redemptioner may redeem the

HeinOnline -- 1867 181 1867

1868 4th Regular.pdf

property from the purchaser within six months after the sale on paying the purchaser the amount of his purchase, with twelve per cent. thereon in addition; together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase and interest on such amount; and if the purchaser be also a creditor, having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

SEC. 232. If property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with four per cent, thereon in addition, and the amount of any assessment of taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; provided that the judgment under which the property was sold need not so be paid as a lien. The property may be again, and so often as the debtor or redemptioner is so disposed redeem from any previous redemptioner, within sixty days after the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after the sale, the purchaser or his assignee shall be entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner or his assignee shall be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

SEC. 233. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale.

SEC. 234. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff: First, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder; second, a copy of any assignment necessary to establish his claim, verified by the affidavit by himself or his agent showing the amount then actually due on the lien.

SEC. 235. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed

HeinOnline -- 1867 182 1867

1868 4th Regular.pdf

waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it, in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

SEC. 236. The purchaser, from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof.

SEC. 237. If the purchaser of real property, sold on execution, or his successor in interest be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereon shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon, from the time of payment, at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues or profits of the said debtor, shall be liable to levy and sale under execution in satisfaction of such debt; provided, that no property of such debtor sold bona fide before the filing of such petition shall be subject to lien of said judgment; and provided further, that notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated. And that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

238. *When execution returned unsatisfied, judgment creditor may compel judgment debtor to appear before a judge and answer concerning his property; debtor not to go out of his county.*

239. *Proceedings to compel debtor to appear, in what case he may be arrested, what bail may be given.*

240. *Any debtor of the judgment debtor, or of those having property belonging to him.*

HeinOnline -- 1867 183 1867

241. *Examination of debtors, of judgment debtors or of those having property belonging.*
242. *Witness required to testify.*
243. *Judge may order property to be applied on execution.*
244. *Proceedings upon claim of another party to property or on denial of indebtedness to judgment debtor.*
245. *Disobedience of order, how punished.*

SEC. 238. When an execution against property of the judgment debtor or any of several debtors in the same judgment issued to the sheriff of the county where he resides, or if he does not reside in this Territory to the sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor at any time after such return is made, shall be entitled to an order from the judge of the court or probate judge, requiring such judgment debtor to appear and answer concerning his property before such judge or a referee appointed by him, at a time and place specified in the order, but no judgment debtor shall be required to attend before a judge or referee out of the (county) in which he resides when proceedings are taken under the provisions of this chapter.

SEC. 239. After issuing an execution against property, and upon proof by affidavit by a party or otherwise, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may by an order require the judgment debtor to appear at a specified time and place before such judge or referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution; Instead of the order requiring the attendance of the judgment debtor the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge he may be ordered to enter into an undertaking with surety that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

SEC. 240. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 241. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceed-

HeinOnline -- 1867 184 1867

ing fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

SEC. 242. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon trial of an issue.

SEC. 243. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except, that the earnings of the debtor for his personal services, at any time within thirty [days] next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 244. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt. And the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the [court] in which the action is brought, at any time, upon such terms as may be just.

SEC. 245. If any person, party or witness, disobey an order of the referee, properly made, in the proceeding before him, under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

TITLE VIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

246. *Proceedings in foreclosue suits.*
247. *Surplus money to be deposited in court.*
248. *Proceedings when debt secured fall due at different times.*

SEC. 246. There shall be but one action for the recovery of any

1868 4th Regular.pdf

debt, or the enforcement of any rights, secured by mortgage, upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In actions for the foreclosue of mortgages, the court shall have the power, by its judgment, to direct a sale of the incumbered property (or as much as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and expenses of the sale and the amount due to the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment shall be docketed for such balance against the defendant or defendants personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. No person holding a conveyance from or under the mortgagor, or of the property mortgaged, or having a lien thereon, which conveyance does not appear on record in the proper office at the time of the commencement of the action need not be made a party to such action; and the judgment therein rendered, and the proceedings therein had shall be as conclusive against the party holding such unrecorded conveyance or lien, as if he had been made a party to said action, and shall in all respects have the same force and effect.

SEC. 247. If there be surplus money remaining after payment of the amount due on the mortgage, lien or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

SEC. 248. If the debt, for which the mortgage, lien or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest, where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCES, WASTE AND WILLFUL TRESPASS IN CERTAIN CASES.

249. *Nuisance defined and actions for.*
250. *Waste, actions for.*
251. *Trespass for cutting or carrying away trees, and actions for.*
252. *Measure of damages in certain cases under the last section.*
253. *Damages in actions for forcible entry, &c., may be trebled.*

HeinOnline -- 1867 186 1867

1868 4th Regular.pdf

SEC. 249. Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

SEC. 250. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for triple damages.

SEC. 251. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway, in front of any person's house, village or city, lot or cultivated grounds, or on the common or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land or to such city or town for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

SEC. 252. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it.

SEC. 253. If a person recover damages for a forcible or unlawful entry in, upon, or detention of, any building, or any cultivated real property, judgment may be entered for three times the amount of which the actual damages are assessed.

CHAPTER III.

ACTIONS CONCERNING REAL ESTATE.

254. *Parties to an action [to] quiet title.*
255. *When plaintiff shall not recover costs.*
256. *If plaintiff's title terminates pending the suit, what he may recover and how verdict and judgment.*
257. *When value of improvements shall be allowed as a set-off.*
258. *Order, what to contain and how served, if unnecessary injury done to the party surveying to be liable therefor.*
259. *A mortgage shall not be deemed a conveyance, whatever its terms.*
260. *When court may grant an injunction; during foreclosure, after sale on execution, before conveyance.*
261. *Damages may be recovered for injury to the possession after sale and before delivery of possession.*
262. *Action not to be prejudiced by alienation pending suit.*

HeinOnline -- 1867 187 1867

1868 4th Regular.pdf

SEC. 254. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him for the purpose of determining such adverse claim, estate or interest.

SEC. 255. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

SEC. 256. If an action for the recovery of real property where the plaintiff shows the right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

SEC. 257. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom he claims, holding under cover of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

SEC. 258. The court in which action is pending for the recovery of real property or a judge thereof, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make a survey and measurement thereof, for the purpose of action.

SEC. 259. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property he shall be liable therefor.

SEC. 260. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

SEC. 261. The court may, by injunction on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution before a conveyance.

SEC. 262. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after a sale and before possession, is delivered under the conveyance.

SEC. 263. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

HeinOnline -- 1867 188 1867

1868 4th Regular.pdf

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

264. *Who may bring actions for partitions.*
265. *Interests of all parties shall be set forth in the complaint.*
266. *Lien-holders not of record need not be made parties.*
267. *Plaintiff shall file notice of his lispendens.*
268. *Summons shall be directed to all persons interested in the property.*
269. *Unknown parties may be served by publication.*
270. *Answer of defendant, what to contain.*
271. *The rights of all parties may be ascertained in the action.*
272. *Repealed.*
273. *Lien-holders shall be made parties or a referee be appointed to ascertain their rights.*
274. *Lien-holders shall be notified to appear before the referee appointed.*
275. *The court may order a sale or partition, and appoint referees therefor.*
276. *Partition shall be made according to the right of the parties as ascertained by the court.*
277. *Referees shall make a report of their proceedings.*
278. *The court may set aside, affirm, report, and enter judgment thereon; upon whom judgment to be conclusive.*
279. *Judgment shall not affect tenants for years to whole property.*
280. *Expenses for partition shall be apportioned among the parties.*
281. *A lien on an undivided interest of any, shall be a charge only on the share assigned to such party.*
282. *Estate for life or years may be set off in a part of the property not sold, when not all sold.*
283. *Application of proceeds of sale of encumbered property.*
284. *Party holding other securities may be required first to exhaust them.*
285. *Proceeds of sale, disposition of.*
286. *When paid into court, the cause may be continued for the determination of the claim of the parties.*
287. *Sales by referees shall be made at public auction.*
288. *The court shall direct the terms of sale or credit.*
289. *Referees may take securities for purchase money.*
290. *Tenants whose estate has been sold, shall receive compensation.*
291. *The court may fix such compensation.*
292. *The court shall protect tenants unknown.*
293. *The court shall ascertain and secure the value of future contingent or vested rights.*
294. *Terms of sale shall be made known at the time. Lots shall be sold separately.*
295. *Who may not be purchasers.*
296. *Referees shall make a report of the [sale] to the court.*
297. *If confirmed, conveyances may be executed.*

HeinOnline -- 1867 189 1867

298. *Proceeding if a lien holder become a purchaser.*
299. *Conveyances shall be recorded and will be a bar against parties.*
300. *Proceeds of sale belonging to parties unknown shall be invested for their benefit.*
301. *Investments shall be made in the name of the clerk of the county.*
302. *When the interest of the parties are ascertained securities shall be taken in their names.*
303. *Duties of the clerk making investments.*
304. *When unequal partition is ordered, compensation may be adjudged in certain cases.*
305. *The share of an infant may be made to his guardian.*
306. *The guardian of an insane person may receive the proceeds of such party's interest.*
307. *A guardian may consent to partition without action and execute releases.*
308. *Costs of partition a lien upon the shares of the parceners.*
309. *The court by consent may appoint a single referee.*

SEC. 264. When several co-tenants hold and are in possession of real property as parceners, joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 265. The interest of all such persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share, or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 266. No person having a conveyance of, as claiming a lien on the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

SEC. 267. Immediately after filing the complaint in the district court, the plaintiff shall file with the recorder of the county, or [of] the several counties, in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

SEC. 268. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment or otherwise, upon the property, or upon any particular portion thereof; and generally to all persons unknown who have or claim any interest in the property.

HeinOnline -- 1867 190 1867

1868 4th Regular.pdf

SEC. 269. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons as published, shall [be] accompanied by a brief description of the property which is the subject of the action.

SEC. 270. The defendants who have been personally served with the summons and a copy of the complaint, who shall have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment or otherwise, they shall correctly state the original amount and date of the same, and the true sum remaining due thereon; also whether the same has been secured in any other way or not, and if secured, the nature and extent of such security, or they shall be deemed to have waived their right to such lien.

SEC. 271. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and where service of the complaint has been made by publication, like proof shall be required of the right of absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action and not as between themselves.

SEC. 272. Whenever from any cause it shall become, in the opinion of the court, impracticable or highly inconvenient to make a complete partition; in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made, as if such original co-tenants were the parties and sole parties in interest, and the only parties to the action, and therefore proceed in like manner to adjudge and make partition separately of each share or partition so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

SEC. 273. If it shall appear to the court by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which issued and were of record at the time of commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order

HeinOnline -- 1867 191 1867

1868 4th Regular.pdf

among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

SEC. 274. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside and a new reference ordered as the justice of the case may require.

SEC. 275. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proof being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests are remaining unknown, or are not ascertained.

SEC. 276. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

SEC. 277. The referee shall make a report of their proceedings, specifying therein the manner of executing their trusts, describing the property divided and the shares allotted to each party, with a particular description of each share.

SEC. 278. If no exceptions be filed to the report, or upon hearing they should be overruled, the court shall confirm the same; or it may, upon exceptions, change, modify, or set aside and refer the matter to the same, or if necessary may appoint new referees. Upon the report as confirmed, a final judgment shall be rendered to the effect that such partition be effectual and valid forever, which judgment shall be binding and conclusive. First, on all persons named in the complaint as parties to the [action,] or who shall have appeared therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property,

HeinOnline -- 1867 192 1867

or who have an interest in any undivided share thereof as tenants for years or for life; second, on all persons interested in the property, who may be unknown, to whom notice shall have been given of the action by publication; third, on all persons claiming from such parties or persons, or either of them, and to that end the action shall be deemed and is hereby declared to be a proceeding in rem. A copy of the report of the referee, as confirmed, together with a copy of the final judgment therein rendered, duly certified, may be filed in the office of the county recorder of the county or counties in which the land is situated, whose duty it shall be to record the same, which filing and recording shall have the same force and effect, as the filing and recording of a deed of conveyance; and, fourth, on all persons who have or claim to have conveyances to, or liens upon, or any interest in the property, when such conveyances, liens or interest, did not appear of record at the time of the commencement of the proceedings for partition.

SEC. 279. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

SEC. 280. The expenses of the referees, including those of a surveyor and his assistant or assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, shall be apportioned among the different parties to the action equitably.

SEC. 281. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

SEC. 282. When a part of the property only is ordered to be sold, if there be an estate for life, or for years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 283. The proceeds of the sale of the encumbered property shall be applied under the direction of the court as follows: First, to pay its just proportion of the general costs of the action; second, to pay the costs of the reference; third, to satisfy and cancel of record the several liens in their order of priority, by payment of the sums due, and become due; the amount due to be verified by affidavit at the time of payment; fourth, the residue among the owners of the property sold, according to the respective shares therein.

SEC. 284. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 285. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs; but in case no

1868 4th Regular.pdf

direction be given all such proceeds and securities shall be paid into court or deposited therein, or as directed by the court.

SEC. 286. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings as in an original action.

SEC. 287. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice in the manner required for the sale of real property on execution. The notice shall state the terms of sale; and if the property or any part of it is to be sold subject to a prior estate, charge or lien, that shall be stated in the notice.

SEC. 288. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

SEC. 289. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant, and for other shares in the name of the clerk of the county and his successors in office.

SEC. 290. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

SEC. 291. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale after deducting expenses will be [a] just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in court, for him as the case may require.

SEC. 292. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

SEC. 293. In all cases of sales when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such

HeinOnline -- 1867 194 1867

1868 4th Regular.pdf

proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of parties.

SEC. 294. In all cases of sales of property the terms shall be made known at the time; and if the premises consist of distinct farms or lots they shall be sold separately.

SEC. 295. Neither of the referees nor any person for the benefit of either of them shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property being the subject of the actions, except for the beenfit of the infant. All sales contrary to the provisions of this section shall be void.

SEC. 296. After completing the sale of the property or any part thereof ordered to be sold, the referee shall report the same to the court with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and condition of the sale, and the securities if any taken. The report shall be filed in the office of the clerk of the county where the property is situated.

SEC. 297. If the sale be confirmed by the court an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

SEC. 298. When a party entitled to a share of property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 299. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons had been served by publication, and against all persons claiming from them or either of them.

SEC. 300. When there are proceeds of sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same shall be invested in securities on interest for the benefit of persons entitled thereto.

SEC. 301. When the security of the proceeds of sale is taken or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the county, where the papers are filed and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

SEC. 302. When security is taken by the referees on a sale and the parties interested in such security by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportion to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties

HeinOnline -- 1867 195 1867

1868 4th Regular.pdf

upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 303. The clerk in whose name the security is taken or by whom an investment is made and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 304. When it appears that partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it shall appear that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby; and in all cases the court shall have the power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

SEC. 305. When the share of an infant is sold the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action, upon giving the security required by law or directed by the order of the court.

SEC. 306. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing with sufficient sureties an undertaking approved by the judge of the court that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled, or to his legal representative.

SEC. 307. The general guardian of an infant and the guardian entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs who is entrusted in real estate held in joint tenancy or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action and agree upon the share to be set off for such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

SEC. 308. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment; in that case there shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against

HeinOnline -- 1867 196 1867

1868 4th Regular.pdf

other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

SEC. 309. The court with the consent of the parties may appoint a single referee instead of three referees, in the proceedings under the provisions of this chapter; and the single referee when thus appointed shall have all the powers and perform all the duties required of the three referees.

CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICER OR FRANCHISE.

310. *Action may be brought; any party usurping, &c., any office of franchise.*
311. *Name of person entitled to office may be set forth in the complaint; if fees have been received by the usurper he may be arrested.*
312. *Judgment may determine the rights of both incumbent and claimant.*
313. *When rendered in favor of applicant.*
314. *Damages may be recovered by successful applicant.*
315. *When several persons claim the same office their rights may be determined by a single action.*
316. *If defendant found guilty, what judgment to be rendered against him.*

SEC. 310. An action may be brought by the district attorney in the name of the people of this Territory upon his own information or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds, or exercises any public office, civil or military, or any franchise within his district, in the Territory; and it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into or unlawfully held or exercised by any person, or when he is directed to do so by the Governor.

SEC. 311. Whenever such action is brought the district attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office with a statement of his rights thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail in the same

HeinOnline -- 1867 197 1867

1868 4th Regular.pdf

manner and with the same effect and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

SEC. 312. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

SEC. 313. If the judgment be rendered upon the right of the person so alleged to be entitled and the same be in favor of such person, he shall be entitled after taking the oath of office and executing such official bond as may be required by law to take upon himself the execution of the office.

SEC. 314. If jugdment be rendered upon the right of the person so alleged to be entitled and the same be in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

SEC. 315. When several persons claim to be entitled to the same office or franchise one action may be brought against all such persons in order to try their respective rights to such office or franchise.

SEC. 316. When a defendant against whom such action has been brought is adjudged guilty of usurping or intruding into or unlawfully holding any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also in its discretion impose upon the defendant a fine not exceeding five thousand dollars, which fine when collected shall be paid into the treasury of the Territory.

TITLE IX.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

317. *Judgment and order may be reviewed.*
318. *An order made out of court without notice may be reviewed by the judge who made it.*
319. *A party aggrieved may appeal in certain cases.*
320. *Within what time appeal may be taken.*
321. *Appeal may be made by filing and serving notice thereof.*
322. *The appellant shall within twenty days prepare statement, subject to amendment and settlement.*

1868 4th Regular.pdf

323. *Omission to make statement or amendment according to preceding section shall be a waiver thereof.*
324. *Time for preparing statements or amendments may be enlarged.*
325. *Authentication of statement.*
326. *Statement shall be annexed to judgment roll or ordered appealed from.*
327. *Appeals from an order made upon affidavit.*
328. *An appeal from judgment, the court may review intermediate orders.*
329. *Remedial powers of the appellant court.*
330. *Appellant shall furnish requisite papers.*

SEC. 317. A judgment or order in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this title and not otherwise.

SEC. 318. An order made out of court without notice to the adverse party may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice in the manner in which other motions are made.

SEC. 319. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant and the adverse party as the respondent.

SEC. 320. An appeal may be taken, first, from a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered within one year after the rendition of the judgment; second, from a judgment rendered on an appeal from an inferior court within ninety days after the rendition of the judgment; third, from an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment from any special order made after a final judgment; and from an interlocutory judgment in actions for partition of real property within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court.

SEC. 321. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

SEC. 322. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and no more, and shall serve a copy thereof upon the adverse party. The respondent may within five days thereafter prepare amendments to the statement and serve the copy upon the appellant. The statement

HeinOnline -- 1867 199 1867

1868 4th Regular.pdf

and amendments which may be served shall be presented to the judge who tried or heard the case upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge. If no amendments are served the statement may be presented to the judge for settlement without any notice to the respondent.

SEC. 323. If the party shall omit to make a statement within the time above limited he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as prepared and the latter to have agreed to the amendments as proposed; but the judge who heard the cause shall, notwithstanding such omission or implied agreement, have power to correct any misstatement of facts or of his rulings which such statement may contain.

SEC. 324. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

SEC. 325. The statement when settled by the judge shall be signed by him, with his certificate that the same has been allowed and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon it shall be filed with the clerk.

SEC. 326. A copy of the statement shall be annexed to a copy of so much of the judgment roll as shall be included in the transcript on appeal, if the appeal be from judgment; if the appeal be from an order, to a copy of such order.

SEC. 327. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed; but such affidavit shall be annexed to the order in the place of the statement mentioned in those sections.

SEC. 328. Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment.

SEC. 329. Upon an appeal from a judgment or order the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside or confirm, or modify any or all of the proceedings subsequent to or dependent upon such judgment or order, and may if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

SEC. 330. On an appeal from a final judgment the appellant shall furnish the court with a transcript of the notice of appeal, the pleadings or amended pleadings, as the case may be, which form the issues tried in the case, the judgment and such other parts of the judg-

HeinOnline -- 1867 200 1867

1868 4th Regular.pdf

ment roll, and no more, as are necessary to present or explain the points relied on and the statement, if there be one, certified by the attorneys of the parties to the appeal or by the clerk to be correct. On appeal from a judgment rendered on an appeal or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below; such copies to be certified in like manner to be correct. If any written opinion be placed on file in rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers the appeal may be dismissed.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS.

331. *When an appeal may be taken.*
332. *Appellants shall file undertaking within five days.*
333. *Undertaking on appeal from a money judgment.*
334. *Appeal from a judgment for delivery of documents or personal property.*
335. *Appeal from a judgment directing the execution of a conveyance, etc.*
336. *An undertaking on appeal from a judgment concerning real property.*
337. *Stay of proceedings, the security on appeal may be limited in case of executor, &c.*
338. *Undertaking may be in one instrument or several.*
339. *Justification of sureties on undertaking on appeal.*
340. *Undertaking in cases not specified above.*
341. *Appeals may be brought to a hearing on notice.*
342. *On judgment on appeal a remittateur shall be certified to the clerk of the court below.*

SEC. 331. An appeal may be taken to the supreme court from the district courts in the following cases: First, from a final judgment entered in an action or special proceedings commenced in those courts or brought in those courts from other courts; second, from an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from any special order made after final judgment; and from such interlocutory judgment in actions for partition as determines the rights and interests of the respective parties and directs partition to be made.

SEC. 332. To render an appeal effectual for any purpose in any case a written undertaking shall be executed on the part of the ap-

HeinOnline -- 1867 201 1867

pellant by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars, or that sum shall be deposited with the clerk with whom the judgment or order was entered to abide the result of the appeal. Such undertaking shall be filed or such deposit made with the clerk within five days after the notice of appeal is filed.

SEC. 333. If the appeal be from a judgment or order directing the payment of money it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant upon the appeal.

SEC. 334. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or received as the court may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 335. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk, with whom the judgment or order is entered, to abide the judgment of the appellate court.

SEC. 336. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

SEC. 337. Whenever an appeal is perfected as provided in the preceding section of this chapter, it shall stay all further proceedings in the court below upon the judgment or order appealed from, or upon the matters embraced therein; and on appeal and filing an appeal bond an appeal from an order discharging an attachment,

HeinOnline -- 1867 202 1867

1868 4th Regular.pdf

said attachment shall not be dissolved and shall remain in full force until the cause be disposed of on appeal; but the court below may proceed upon any other matter embraced in the action and not affected by the order appealed from.

And the court below may, in its discretion, dispense with or limit the security required by said sections when the appellant is an executor, administrator, trustee or other person acting in another's right; provided, that an appeal shall not continue in force on an attachment unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained; and unless, also, notice of the appeal be given within five days after service of the notice of the entry of the order appealed from, and such appeal be perfected and the undertaking in this section mentioned be filed within five days thereafter.

SEC. 338. The undertaking prescribed by sections three hundred and thirty-two, three hundred and thirty-three, three hundred and thirty-four, and three hundred and thirty-six may be in one instrument or several, at the option of the appellant.

SEC. 339. An undertaking upon appeal shall be of no effect unless it be accompanied by the affidavits of the sureties that they are each worth the amount specified therein over above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking is executed by more than two sureties; they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking if the whole amount be equivalent to that of two sufficient sureties. The adverse party, however, may except to the sufficiency of the sureties to the undertaking or undertakings mentioned in sections three hundred and thirty-three, three hundred and thirty-four, three hundred and thirty-five, and three hundred and thirty-six, at any time within thirty days after the filing of such undertakings; and unless they or other sureties within twenty days after the appellant or appellants shall have been served with notice of such exception, justify before a judge of the court below, a probate judge or county clerk, upon five days notice to the appellant, execution of the judgment or decree appealed from shall be no longer stayed, and in all cases where an undertaking is required on appeal by the provisions of this act a deposit in the court below of the amount of the judgment appealed from and three hundred dollars in addition shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

SEC. 340. In cases not provided for in section three hundred and thirty-three, three hundred and thirty-four, three hundred and thirty-five, three hundred and thirty-six, the perfecting of an appeal by giving the undertaking and the justification of the sureties thereon if required; on making the deposit mentioned in section three hundred and thirty-two, shall stay proceedings in the court below upon

HeinOnline -- 1867 203 1867

the judgment or order appealed from, except where it directs the sale of perishable property, the court below may order the property to be sold and the proceeds thereof to be deposited to abide the judgment of the appellate court.

SEC. 341. Appeals in the supreme court may be brought to a hearing by either party upon notice of three days to the opposite parties. Before the argument each party shall furnish to the other, and each of the justices a copy of his points and authorities; or either party may file one copy thereof, with the clerk, who shall cause the requisite copies to be made.

SEC. 342. When judgment is rendered upon appeal it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from, reference to the certificate, with a brief statement that such order has been affirmed, reversed or modified, as the case may be, by the supreme court on appeal.

CHAPTER III.

APPEALS TO THE DISTRICT COURT FROM THE PROBATE COURTS.

343. *Appeals may be taken from probate court.*
344. *Time within which appeal shall be taken.*
345. *Appeals shall be heard as soon as possible.*

SEC. 343. An appeal may be taken from a probate court to the district court of the district in which the probate court is held in the following cases: First, from an order or decree admitting a will to probate or refusing the same; second, from an order setting apart property or making an allowance for the widow or children; third, from an order granting letters testamentary or of administration, or appointing a guardian of an infant or of insane person, or of a person incompetent to manage his property, or refusing to grant such letters or to make such appointment or making such letters of appointment; fourth, from an order directing the sale or conveyance of real property; fifth, from an order or decree by which a debt, claim, legacy or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused; sixth, from an order made on the settlement of an executor, administrator or guardian.

SEC. 344. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

SEC. 345. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For a failure to prosecute on appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

HeinOnline -- 1867 204 1867

TITLE X.

CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

346. *Parties not summoned in action on joint contract may be summoned after judgment.*
347. *Summons, in that case, what to contain and how served.*
348. *Affidavit to accompany summons.*
349. *Answer, when filed and what it may contain.*
350. *What will constitute the pleadings in the case.*
351. *Issues how tried and verdict what to be.*

SEC. 346. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation by proceeding as provided in section thirty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

SEC. 347. The summons as provided in the last section shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

SEC. 348. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment or some part thereof remains unsatisfied, and shall specify the amount due thereon.

SEC. 349. Upon such summons the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

SEC. 350. If the defendant in his answer deny the judgment or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons with the affidavit annexed and the answer shall constitute such written allegations.

HeinOnline -- 1867 205 1867

1868 4th Regular.pdf

SEC. 351. The issues formed may be tried as in other cases; but when the defendant denies in his answer, any liability on the obligations upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

352. *Judgment may be confessed for debt due or contingent liability.*
353. *Statement in writing and form thereof.*
354. *Filing statement and entering judgment.*

SEC. 352. A judgment by confession may be entered without action, either for money due or to become due; or to secure any person against contingent liability on behalf of the defendant or both, in the manner prescribed by this chapter.

SEC. 353. A statement in writing shall be made [and] signed by the defendant and verified by his oath, to the following effect: First, it shall authorize the entry of judgment for a specified sum; second, if it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due; third, if it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability and shall show that the sum confessed therefor does not exceed the same.

SEC. 354. The statement shall be filed with the clerk of the court in which the judgment is to be entered who shall endorse upon it, and enter into the judgment book a judgment of such court for the amount confessed, with costs. The statement and affidavit with the judgment endorsed shall thereupon become the judgment roll.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

355. *Controversy, how submitted without action.*
356. *Judgment on, as in other cases, but without costs prior to notice of trial.*
357. *Judgment may be enforced or appealed from, as in an action.*

HeinOnline -- 1867 206 1867

1868 4th Regular.pdf

SEC. 355. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends and present a submission of the same to any court which should have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were depending.

SEC. 356. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll.

SEC. 357. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

OF ARBITRATIONS.

358. *Who may submit controversy to arbitration, and exceptions.*
359. *Submission to arbitration shall be in writing.*
360. *Submission may be entered as an order of court; revocation.*
361. *Powers of arbitrators.*
362. *Majority of arbitrators may determine any question; they shall be sworn.*
363. *Award to be in writing; when judgment to be entered.*
364. *Award may be vacated in certain cases.*
365. *Court may, on motion, modify or correct the award.*
366. *Decision on the motion subject to appeal, but not the judgment entered before motion.*
367. *If submission be revoked and an action be brought, what to be recovered.*

SEC. 358. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

SEC. 359. The submission to arbitration shall be in writing and may be to one or more persons.

SEC. 360. It may be stipulated in the submission that it be entered as an order of probate court or of the district court, for which purpose it shall be filed with the clerk of the court. The clerk shall thereupon enter into his register of actions a note of the submis

HeinOnline -- 1867 207 1867

1868 4th Regular.pdf

with the names of the parties, the names of the arbitrators, the date of the submission, when filed and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made,

SEC. 361. Arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear the allegations and evidence of the parties, and to make an award thereon.

SEC. 362. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oats, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

SEC. 363. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

SEC. 364. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, at its discretion: First, that it was procured by corruption or fraud; second, that the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced; third, that the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matter submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 365. The court may, on motion, modify or correct the award where it appears: First, that there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein; second, when a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted; third, when the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

SEC. 366. The decision upon the motion shall be subject to appeal

HeinOnline -- 1867 208 1867

in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion is made, shall not be subject to appeal.

SEC. 367. If a submission to arbitration be revoked and an action be brought therefor; the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER VI.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR PART OF AN ACTION.

SEC. 368. The defendant may at any time before the trial or judgment serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from time of the offer.

TITLE XI.

CHAPTER I.

OF WITNESSES.

369. *All persons may be witnesses except as specified in this chapter.*
370. *No person shall be excluded for his religious belief; when a person may be excluded for interest.*
371. *The test of interest; a party may call the adverse party.*
372. *Persons who shall not be witnesses.*
373. *Husband and wife shall not be witnesses for or against each other.*
374. *Attorney shall not be examined as to a communication made by a client without consent.*
375. *Nor a priest as to any confession.*
376. *Nor a physician as to any information necessarily required in that capacity.*
377. *Nor a public officer as to communication made in official confidence.*
378. *The judge or any juror may be a witness.*
379. *When the witness does not speak English an interpreter shall be sworn.*

HeinOnline -- 1867 209 1867

SEC. 369. All persons without exception otherwise than as specified in this chapter, may be witnesses in an action or proceeding. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of affecting its credibility.

SEC. 370. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief or by reason of his interest in the event of the action or proceeding as a party thereto or otherwise; but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compelable to give evidence either viva voce or by deposition, or upon a commission, in the same manner and subject to the same rules of examination as any other witness, on behalf of himself or either or any of the parties to the action or proceeding.

SEC. 371. No person shall be allowed to testify under provision of section three hundred and seventy where the adverse party or the party for whose immediate benefit the action or proceeding is prosecuted or defended is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person; and nothing in said section shall effect the laws in relation to attestation of any instrument required to be attested; nor shall anything contained in said section render any person who in a criminal proceeding is charged with the commission of any public offense, competent or compelable to give evidence therein for or against himself.

SEC. 372. The following persons shall not be witnesses: First, those who are of unsound mind at the time of their production for examination; second, children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; third, Mongolians, Chinese, negroes or Indians, or persons having one-half or more Indian blood, in an action or proceeding wherein a white person is a party; fourth, persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the Governor, or such judgment has been reversed on appeal.

SEC. 373. A husband shall not be a witness for or against his wife and a wife shall not be a witness for or against her husband; and where husband and wife are parties to an action or proceeding they, or either of them, may be examined as witnesses in their own behalf, or in behalf of each other, or in behalf of any of the parties thereto, the same as any other witness; but this section shall not apply to cases of divorce, neither shall any husband or wife be competent or compelable to disclose any communication made to him or her by the other during marriage.

SEC. 374. An attorney or counsellor shall not, without the consent of his client; be examined as a witness as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

SEC. 375. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any

1868 4th Regular.pdf

confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

SEC. 376. A licensed physician or surgeon shall not, without consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; provided, however, in any suit or prosecution against a physician or surgeon for mal-practice, if the patient or party suing or prosecuting shall give such consent and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physician, or surgeon, as witness on behalf of the defendant, without the consent of such patient or party suing or prosecuting.

SEC. 377. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

SEC. 378. The judge himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

SEC. 379. When a witness does not understand and speak the English language an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpoena. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt and may be punished accordingly.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES AND THEIR RIGHTS AND DUTIES.

380. *Subpoenas may require witnesses alone or to bring books, &c., but not more than thirty miles, if out of the county.*
381. *Subpoenas shall be issued, in what cases.*
382. *Services of subpoena.*
383. *Service on concealed witness.*
384. *Persons present may be required to testify without subpoena.*
385. *A witness duly served shall attend as required.*
386. *A witness shall answer pertinent questions, exceptions.*
387. *Penalty for disobedience to subpoena, &c.*
388. *Witness disobeying subpoena shall forfeit one hundred dollars and damages.*
389. *If witness fail to attend the court may issue a warrant.*

HeinOnline -- 1867 211 1867

390. *If witness be a prisoner, an order for his examination or production may be made.*
391. *Such order can be made only upon affidavit.*
392. *When imprisoned witness may be produced or his deposition taken.*
393. *Witness duly subpoenaed, exempt from arrest in a civil action.*
394. *Arrest of witness under subpoena void; may be discharged on affidavit.*

SEC. 380. A subpoena may require not only the attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge or justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

SEC. 381. The subpoena shall be issued as follows: First, to require attendance before the court or at the trial of an issue therein, it shall be issued, and under the seal of the court before which the attendance is required or in which the issue is pending; second, to require attendance out of the court before a judge or justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it shall be issued by the judge, justice, or any other officer before whom the attendance is required; third, to require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other State in the United States of America, or any other district or county within the Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process as such judge or justice could exercise if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

SEC. 382. The service of a subpœna shall be made by showing the original and delivering a copy or a ticket containing its substance to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated and one day's attendance there. Such service may be made by any person.

SEC. 383. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing the subpœna, may upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly; and for that purpose may break into the building or vessel where the witness is concealed.

SEC. 384. A person present in court or before a judicial officer may

1868 4th Regular.pdf

be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

SEC. 385. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and unless sooner discharged to remain until the testimony is closed.

SEC. 386. A witness shall answer questions, legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer that will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

SEC. 387. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer issuing the subpœena or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

SEC. 388. A witness disobeying a subpœna shall also forfeit to the party aggrieved, the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

SEC. 389. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

SEC. 390. If the witness be a prisoner, confined in a jail or prison, within this Territory for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be made as follows: First, By the court itself, in which the action or special proceeding is pending. Second, By a judge of the supreme court, district court or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

SEC. 391. Such order can only be made on affidavit, showing the nature of the action or proceeding, the testimony expected from the witness and its materiality.

SEC. 392. If the witness be imprisoned in the county where the action or proceeding is pending, and a cause other than felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

SEC. 393. Every person who has been in good faith served with a subpœna to attend as a witness before a court, judge, commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest

1868 4th Regular.pdf

in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

SEC. 394. The arrest of a witness contrary to the last section, shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit, stating, First, That he has been served with a subpœna to attend as a witness, before a court, officer, or other person; specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and, Second, That he has not been thus served by his own procurement, with the intention of avoiding an arrest. Third, That he is at the time going to the place of attendance or returning therefrom, or remaining there in obedience to the subpœna. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

CHAPTER III.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, ANQ OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

395. *No action for discovery of evidence shall be allowed.*
396. *A party may be examined for adverse party in the same manner as any other witness.*
397. *Such examination may be rebutted.*
398. *Penalty for refusal of a party to testify.*
399. *Party so called may be examined on his own behalf, when adverse party may be called in rebuttal.*
400. *A person for whose benefit an action is prosecuted may testify as if a party. And a party may be examined on his own behalf on notice.*
401. *Carpenters, when parties, may be examined to prove items of account.*

SEC. 395. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this and the foregoing chapter.

SEC. 396. A party to an action or proceeding may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties; and for that purpose may be compelled in the same manner and subject to the same rules of examination as any other witness to testify at the trial, and he may be examined on a commission.

SEC. 397. The examination of a party thus taken may be rebutted by adverse testimony.

HeinOnline -- 1867 214 1867

1868 4th Regular.pdf

SEC. 398. If an adverse party refuse to attend or testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint or answer may be stricken out and judgment be taken against him, and he may be also in the discretion of the court, proceeded against as in other cases for contempt.

CHAPTER IV.

ON AFFIDAVIT.

399. *Affidavits to be used in this Territory, before whom may be taken in this Territory.*
400. *If made in another State of the United States, before whom taken.*
401. *If made in a foreign country, by whom taken.*
402. *Certificate of clerk, if taken before a judge of a court out of this Territory.*

SEC. 399. An affidavit to be used before any court, judge or officer of this Territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this Territory.

SEC. 400. An affidavit taken in another State of the United States to be used in this Territory, shall be taken before a commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory, or before any judge of a court of record having a seal.

SEC. 401. An affidavit taken in a foreign country to be used in this Territory shall be taken before an ambassador, minister or consul of the United States, or before any judge of a court of record having a seal, in such foreign country.

SEC. 402. When an affidavit is taken before a judge of a court in another State or in a foreign country, the genuineness of the signature of the judge, the existence of the court and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

CHAPTER V.

OF DEPOSITIONS TAKEN IN THIS TERRITORY.

403. *Depositions of witnesses in this Territory may be taken in certain cases.*
404. *Depositions may be taken before a judge, etc., upon notice to the adverse party.*

HeinOnline -- 1867 215 1867

405. *Manner of taking depositions; may be used by either party on the trial.*
406. *A deposition may be read at any stage of the action or proceeding.*

SEC. 403. The testimony of a witness in this Territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases: First, when the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended; second, when the witness resides out of the county in which his testimony is to be used; third, when the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required; fourth, when the witness otherwise liable to attend the trial, is nevertheless to inform to attend.

SEC. 404. Either party may have the depositions taken of a witness in this Territory, before any judge or clerk, or any justice of the peace or notary public in this Territory, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending; such notice shall be at least five days, and in addition one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown, a judge by order prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

SEC. 405. Either party may attend such examinations and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk, or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial, or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's

HeinOnline -- 1867 216 1867

1868 4th Regular.pdf

knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

SEC. 406. When a deposition has once been taken it may be read in any stage of the same action or proceeding by either party, and shall then be deemed evidence of the party reading it.

CHAPTER VI.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

407. *Testimony of a witness out of the Territory may be taken after service of summons or issue joined.*
408. *Such deposition shall be taken upon commission issued under seal, upon notice to whom to issue.*
409. *Proper interrogations, direct and cross, may be prepared or may be waived by the parties.*
410. *Authorities and duties of commissioner. Trials shall not be postponed for return of commission, except upon showing of materiality of evidence and due diligence.*

SEC. 407. The testimony of a witness out of the Territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

SEC. 408. The deposition of a witness out of the Territory shall be taken upon commission issued from the court under the seal of the court upon an order of the judge or court, or probate judge, on the application of either party, upon five day's previous notice to the other. It shall be issued to a person agreed upon between the parties; or if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the Governor of the Territory to take affidavits and depositions in other States and Territories.

SEC. 409. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission at a day fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

SEC. 410. The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories; or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channels of conveyance.

SEC. 411. A trial or other proceeding shall not be postponed by

HeinOnline -- 1867 217 1867

1868 4th Regular.pdf

reason of a commission not returned except upon evidence satisfactory to the court that the testimony of the witness is necessary and that proper diligence has been used to obtain it.

CHAPTER VII.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

412. *Testimony may be perpetuated.*
413. *The applicant shall present verified petition to a judge, granting and service of order.*
414. *Upon due service of notice the deposition of witness may be taken.*
415. *Manner of taking deposition and filing thereof.*
416. *Affidavits, etc., filed with deposition shall be prima facie proof of the facts therein stated.*
417. *Manner of using such depositions if trial be had.*

SEC. 412. The testimony of a witness or witnesses may be taken and perpetuated as provided in this chapter.

SEC. 413. The applicant shall present to a district or probate judge a petition verified by the oath of the applicant, stating: First, that the applicant expects to be a party to an action in a court in this Territory, and in such case the name or names of the person or persons whom he expects will be adverse parties; or, second, that the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated he may not know the parties to such suit; and, third, the name or names of the witness or witnesses to be examined at his or their place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented shall make an order allowing the examination and prescribing the notice to be given, which notice, if parties are known and reside in this Territory, shall be personally served on them; and if unknown, such notice shall be served on the clerk of the county where the property to be affected by such evidence is situated, and a notice thereof to be published in some newspaper to be designated by the judge making the order.

Sec. 414. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the judge before whom the depositions are taken to proceed to take the depositions of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time in the discretion of the judge.

Sec. 415. The examination shall be by question and answer, un-

HeinOnline -- 1867 218 1867

1868 4th Regular.pdf

less the parties otherwise agree. The deposition when taken shall be carefully read to and subscribed by the witness, then certified by the judge, and immediately thereafter filed in the office of the clerk of the district court of the county where the same was taken, together with the order for the examination, the petition on which the same was granted and the proof of service of notice.

Sec. 416. The affidavits or other proofs filed with the depositions, or certified copies thereof, shall be prima facie evidence of the facts therein stated.

Sec. 417. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove or tend to prove, upon proof of the death or insanity of the witness or witnesses, or if his or their inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or depositions, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER VIII.

ADMINISTRATION OF OATH AND AFFIRMATION.

418. *Authorizing certain persons to administer oaths.*
419. *A person may be sworn according to the peculiar ceremonies of his religion.*
420. *A witness may, instead of taking the oath, make an affirmation.*

Sec. 418. Every court of this Territory, every judge or clerk of any court, every justice of the peace and every notary public, and every officer authorized to take testimony or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

Sec. 419. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Sec. 420. A witness who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed in the following form:

You do solemnly affirm that the evidence you shall give in this issue (or matter) pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth. Assent to this affirmation shall be made by answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

HeinOnline -- 1867 219 1867

1868 4th Regular.pdf

CHAPTER IX.

INSPECTION OF DOCUMENTS, AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

421. *The court may upon notice order a party to grant an inspection of a book, etc., relating to the merits of a case.*
422. *When there may be evidence of the contents of a writing other than itself.*
423. *Introduction in evidence of a writing altered in a material part.*
424. *Proof of a judicial record of this Territory, or of the United States.*
425. *Proof of the records, etc., of any other State or Territory of the United States.*
426. *Proof of a judicial record of a foreign country.*
427. *Proof of a copy of a judicial record of a foreign country.*
428. *Printed copies of statutes, etc., of another State or government, published by authority, is presumptive evidence of such laws.*
429. *Impression of a seal of a court or public office.*

Sec. 421. Any court in which an action is pending, or a judge thereof may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court may exclude the book, document or paper from being given in evidence; or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents, when he is examined as a witness.

Sec. 422. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases: First, when the original has been lost or destroyed, in which case proof of the loss or destruction shall first be made; second, when the original is in possession of the party against whom the evidence is offered and he fails to produce it after reasonable notice; third, when the original is a record or other document, in the custody of a public officer; fourth, when the original has been recorded and a certified copy of the record is made evidence by statute; fifth, when the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

HeinOnline -- 1867 220 1867

1868 4th Regular.pdf

Sec. 423. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that he may give the writing in evidence, but not otherwise.

Sec. 424. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

Sec. 425. The records in judicial proceedings of the courts of any other State or Territory of the United States may be proved or admitted in the courts of this Territory, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form.

Sec. 426. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal, or by the legal keeper of the record with the seal of his office annexed, if there be a seal, to be a true copy of such record; together with a certificate of a judge of the court, that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case, that the signature is genuine, and the certificate in due form; and also, togethed with the certificate of the minister or ambassador of the United States, or of a consul of the United States, in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

Sec. 427. A copy of the judicial record of a foreign country shall also be admissable in evidence upon proof: First, That the copy offered has been compared by the witness with the original and is an exact transcript of the whole of it. Second, That such original was in custody of the clerk of the court or other legal keeper of the same; and, Third, That the copy is duly attested by a seal which is proved to be the seal of the court where the records remain if it be the record of a court or if there be no such seal, or if it be not the record of a court, by the signature of the legal keeper of the original.

Sec. 428. Printed copies, in volumes, of statutes, code or other written law, by any other State, Territory or foreign government, purporting or proven to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such State, Territory or governments, shall be admitted by court and officers of this Territory on all occasions as presumptive evidence of such laws.

Sec. 429. A seal of a court or public officer when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer or any other

HeinOnline -- 1867 221 1867

1868 4th Regular.pdf

substance, and then attached to the writ, process or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XII.

CHAPTER I.

OF THE WRIT OF CERTIORARI AND MANDAMUS.

435. *The writ of certiorari, denomination of.*
436. *This writ may be issued by a superior court to an inferior tribunal, in what cases.*
437. *The application shall be made on affidavit, with notice or without.*
438. *The writ to be directed to the inferior tribunal.*
439. *The contents of the writ.*
440. *Proceedings in the inferior court, etc., may be stayed or not.*
441. *Service of the writ.*
442. *The review under the writ, extent of.*
443. *A defective return of the writ may be perfected; hearing and judgment.*
444. *Copy of judgment shall be sent to the inferior tribunal, etc.*
445. *Judgment roll; appeals may be taken as in civil cases.*

Sec. 430. The writ of certiorari may be denominated the writ of review.

Sec. 431. This writ may be granted on application by any court of this Territory, except a justice's, probate or mayor's court; the writ shall be granted in all cases when an inferior tribunal, board or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

Sec. 432. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Sec. 433. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified, when directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Sec. 434. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Sec. 435. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted in the sound discretion of the court; but if

HeinOnline -- 1867 222 1867

1868 4th Regular.pdf

omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

Sec. 436. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Sec. 437. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

Sec. 438. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

Sec. 439. A copy of the judgment signed by the clerk, shall be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up.

Sec. 440. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the Supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

441. *The writ of mandamus, denomination of.*
442. *The writ may be issued by a superior court to an inferior tribunal, etc., in what cases.*
443. *The writ shall issue on affidavit where there is no adequate remedy in the ordinary course of law.*
444. *Shall be either alternative or peremptory substance of the writ.*
445. *If the application be without notice, the alternative writ shall issue; otherwise, the peremptory. Notice and default.*
446. *The adverse party may answer under oath.*
447. *If an essential question of fact is raised, the court may order a jury trial.*
448. *The applicant may demur to the answer or countervail if by proof.*
449. *Either party may move for a new trial. Two verdicts for the same party shall be conclusive.*
450. *The clerk shall transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion.*
451. *If no answer be made, or if the answer raise no material issue of fact, the hearing shall be before the court.*
452. *If the applicant succeed, he may have damages, costs, and a peremptory mandate.*
453. *Service of writ.*
454. *Penalty for disobedience to the writ of mandate.*

HeinOnline -- 1867 223 1867

1868 4th Regular.pdf

Sec. 441. The writ of mandamus may be denominated the writ of mandate.

Sec. 442. It may be issued by any court in this Territory, except a justice's, probate, or mayor's court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Sec. 443. The writ shall be issued in all cases where there is not a plain, speedy and adequate remedy, in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

Sec. 444. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed; and command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted and a return day shall be inserted.

Sec. 445. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court whether the adverse party appear or not.

Sec. 446. On the return of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow the party on whom the writ or notice shall have been served, may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

Sec. 447. If an answer is made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may in its discretion order the question to be tried before a jury and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

Sec. 448. On the trial the application shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

Sec. 449. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement

HeinOnline -- 1867 224 1867

1868 4th Regular.pdf

prepared as provided in section one hundred and ninety-five. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

Sec. 450. If no notice for a new trial be given, or if given, be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application upon reasonable notice to the adverse party.

Sec. 451. If no answer be made the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question, such as is mentioned in section four hundred and forty-seven, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying; if the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear or fix a day for hearing the argument of the case.

Sec. 452. If judgment be given for the applicant he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court, or referees upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue and a peremptory mandate shall also be awarded without delay.

Sec. 453. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

Sec. 454. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation, board, or such person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of a persistance in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ.

TITLE XIII.

OF CONTEMPTS AND THEIR PUNISHMENTS.

455. *Contempts, what shall be deemed.*
456. *A contempt committed in the presence of the court may be punished summarily; when not so committed an affidavit or statement shall be made.*

HeinOnline -- 1867 225 1867

457. *A warrant of attachment to answer may issue, or notice to show cause.*
458. *Bail may be given by a person arrested under such warrant.*
459. *Sheriff shall, upon executing the warrant, arrest and detain the person until discharged.*
460. *Bail bond, form and condition of.*
461. *Officer shall return warrant and bail bond, if any.*
462. *Hearing.*
463. *Judgment and penalty if guilty.*
464. *If the contempt is the omission of any act, the person may be imprisoned until performed.*
465. *Person in contempt may also be indicted, if an indictable offense.*
466. *If the party fail to appeal, proceedings.*
467. *Illness sufficient excuse for non-appearance of party arrested; confinements under arrests for contempt.*
468. *Judgments and orders in such cases final. Extent of punishment.*

Sec. 455. The following acts or omissions shall be deemed contempts: 1st. Disorderly, contemptuous or insolent behavior towards the judge whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators, while sitting on a reference or arbitration tending to interrupt the due course of a trial, reference or arbitration or other judicial proceedings. 2d. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the court, or its immediate vicinity, tending to interrupt the due course of a trial or judicial proceeding. 3d. Disobedience or resistance to any lawful writ, order, rule or process, issued by the court or judge at chambers. 4th. Disobedience of a subpœna duly served or refusing to be sworn or answer as a witness. 5th. Rescuing any person or property in the custody of an officer, by virtue of an order of process of such court or judge at chambers.

Sec. 456. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily; for which an [order] shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein described. When the contempt is not committed in the immediate view and presence of the court or judge [at] chambers, an affidavit shall be presented to the court, or judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

Sec. 457. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant or attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

HeinOnline -- 1867 226 1867

1868 4th Regular.pdf

Sec. 458. Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Sec. 459. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order may be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Sec. 460. When a direction to let a person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on return of the warrant and abide the order of the court or judge thereon; or they will pay, as may be directed, the sum specified in the warrant.

Sec. 461. The officer shall return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Sec. 462. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Sec. 463. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed upon him not exceeding five hundred dollars.

Sec. 464. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Sec. 465. Persons proceeded against, according to the provisions of this chapter, shall also be liable to indictment for the same misconduct if it be an indictable offense; but the court, before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Sec. 466. When the warrant of arrest has been returned served, if the person arrested do not appear on return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Sec. 467. Whenever by the provisions of this chapter, an officer is required to keep a person, arrested on a warrant of attachment, in custody, and to bring him before a court or judge, the inability, from illness or otherwise of the person to attend, shall be a sufficient ex-

HeinOnline -- 1867 227 1867

1868 4th Regular.pdf

cuse for not bringing him up; and the officer shall not confine a person, arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Sec. 468. The judgment and order of the court or judge, made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprisonment; but no fine shall exceed the sum of fifty dollars.

TITLE XIV.

OF COSTS.

469. *Compensation of attorneys. Prevailing party shall be allowed costs.*
470. *Plaintiff's costs shall be allowed of course, upon judgment in his favor in certain cases.*
471. *Several actions, brought on a single cause of action, shall carry costs in but one.*
472. *Defendant's costs shall be allowed, of course, in certain cases.*
473. *Costs in actions not mentioned in section four hundred and ninety-five; costs not allowed when recovery is less than two hundred dollars.*
474. *When the several defendants be not united in interest, costs may be recovered.*
475. *Costs discretionary with the court, in certain cases.*
476. *Referee's fees.*
477. *Continuance; costs may be imposed as a condition of.*
478. *Costs when a tender is made before suit is brought.*
479. *Costs in actions by, or against, an administrator, etc.*
480. *Costs in a review, other than by appeal.*
481. *Costs on the commencement of an action.*
482. *Filing of an affidavit to bills of costs.*
483. *Interest and costs shall be included by the clerk in the judgment.*
484. *When plaintiff is a non-resident, or foreign corporation, defendant may require security for costs.*
485. *Justification of sureties on undertaking for costs.*
486. *If such security be not given, the action may be dismissed.*

Sec. 469. The measure and mode of compensation of attorneys and counselors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district courts and probate courts, his costs and necessary disbursements in the action, or special proceedings in the nature of an action.

HeinOnline -- 1867 228 1867

1868 4th Regular.pdf

Sec. 470. Costs may be allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases: First, in an action for the recovery of real property; second, in an action to recover the possession of personal property when the value of the property amounts to fifty dollars or over. Such value shall be determined by the jury, court or referee by whom the action is tried; third, in an action for the recovery of money or damages, when plaintiff recovers fifty dollars or over; fourth, in special proceedings in the nature of an action.

Sec. 471. When several actions are brought on one bond, undertaking, promissory note, bill of exchange or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election; if the party proceeded against in the other actions were, at the commencement of the previous action, openly within the Territory; but the disbursements of the plaintiff shall be allowed to him in each action.

Sec. 472. Costs shall be allowed, of course, to the defendant, upon a judgment in his favor in the actions mentioned in section four hundred and seventy, and in a special proceeding in the nature of an action.

Sec. 473. In other actions than those mentioned in section four hundred and seventy, costs may be allowed or not; and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than fifty dollars; nor in an action to recover the possession of personal property when the value of the property is less than fifty dollars.

Sec. 474. When there are several defendants in the actions mentioned in section four hundred and seventy, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgments in their favor.

Sec. 475. In the following cases the costs of an appeal shall be in the discretion of the court: 1st. When a new trial is ordered, 2d. When a judgment is modified.

Sec. 476. The fees of referees shall be eight dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Sec. 477. When an application is made to a court or referee to postpone a trial, the payment of the costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Sec. 478. When on an action for the recovery of money only, the defendant in his answer alleges that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the

HeinOnline -- 1867 229 1867

plaintiff shall not recover costs, but shall pay costs to the defendant.

Sec. 479. In an action prosecuted or defended by an executor, administrator, or trustee of express trust, or a person expressly authorized by statute, costs may be recovered, as in action by and against a person prosecuting or defending his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendent, personally, for mismanagement or bad faith in the action or defense.

Sec. 480. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in other way than by appeal, the same costs shall be allowed as in causes on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Sec. 481. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceedings; which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Sec. 482. The clerk shall include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank, left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Sec. 483. When a plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new additional undertaking be executed and filed.

Sec. 484. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and house-holder or freeholder within the county, and is worth the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Sec. 485. After the lapse of thirty days from the service of notice that surety is required, or of an order that new or additional security, upon proof thereof, and that no undertaking as required

HeinOnline -- 1867 230 1867

1868 4th Regular.pdf

has been filed, the court or judge may order the action to be dismissed.

TITLE XV.

OF MOTIONS, ORDERS, NOTICES, SERVICE OF PAPERS, AND MISCELLANEOUS PROVISIONS.

486. *Orders and motions, defined.*
487. *Motions, when to be made.*
488. *Notice of motion, at what time be given.*
489. *Transfer of motions, and orders to show cause.*
490. *Provisions of this title not applicable to original or final process.*
491. *Service of notice of motion, when personal or otherwise.*
492. *Service may be made by mail when the persons reside in different places.*
493. *Manner of service by mail.*
494. *Appearance; notice after appearance.*
495. *Service on non-residents; where a party has an attorney, service shall be on such attorney.*
496. *Successive actions on the same contract, etc.*
497. *Consolidations of several actions into one.*
498. *Adverse claims, actions may be brought to determine.*
499. *The clerk shall keep a register of actions.*
500. *Two or three referees, etc., may do any act.*
501. *Computation, of time in this act. The time within which any act is to be done may be extended.*
502. *Papers without title of the action, or with defective title may be valid.*
503. *Limitation of actions which have arisen in another Territory.*

Sec. 486. Every direction of a court or judge made or entered in writing, and not included in a judgment; is denominated an order. An application for an order is a motion.

Sec. 487. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

Sec. 488. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing, otherwise ten days; but the court or judge may prescribe a shorter time.

Sec. 489. When a notice of motion is given, or an order to show cause is made returnable before a judge out of the court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

Sec. 490. Written notices and other papers when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceeding to bring a party into contempt.

HeinOnline -- 1867 231 1867

1868 4th Regular.pdf

Sec. 491. The service may be personal by delivery to the party or attorney on whom the service is required to be made, or it may be as follows: First, if upon an attorney it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same enclosed in an envelope into the post-office, directed to such attorney; second, if upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the postoffice, directed to such party.

Sec. 492. Service by mail may be made, when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Sec. 493. In case of service of mail, the notice or other paper shall be deposited in the postoffice, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address; provided, that service in any case shall be deemed complete at the end of forty days from the date of its deposit in the postoffice.

Sec. 494. A defendant shall be deemed to appear in action when he answers, demurs, or gives the plaintiff a written notice of his appearance, or when an attorney gives notice of an appearance for him. After appearance, a defendant or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But when a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Sec. 495. When a plaintiff or defendant who has appeared, resides out of the Territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where the party has an attorney in the action or proceeding, the service of papers when required shall be upon the attorney instead of the party, except of subpœnas of writs and other process issued in the suit, and of papers to bring him into contempt.

Sec. 496. Successive actions may be maintained upon the same contract or transaction, whenever after the former action, a new cause of action arises therefrom.

Sec. 497. Whenever two or more actions are pending at one time between the same parties and in the same court upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

HeinOnline -- 1867 232 1867

1868 4th Regular.pdf

Sec. 498. An action may be brought by one person against another for the purpose of determining an adverse claim which the latter makes against the former, for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other for which the plaintiff is bound as security.

Sec. 499. The clerk shall keep among the records of the court a register of actions; he shall enter therein the title of the action, with brief notes under it from time to time of all papers filed and proceedings had therein.

Sec. 500. When there are three referees or three arbitrators, all shall meet; but two of them may do any act which might be done by all.

Sec. 501. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last; if the last day be Sunday it shall be excluded. When the act to be done relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the service of notices other than appeal, or the preparation of statement, or of bills of exceptions, or of amendments thereto, the time allowed by this act may be extended upon good cause shown by the court in which the action is pending, or the judge thereof, or in the absence of such judge from the county in which the action is pending by the probate judge; but such extension shall not exceed thirty days beyond the time prescribed by this act, without the consent of the adverse party.

Sec. 502. An affidavit, notice, or other paper, without the title of an the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Sec. 503. When a cause of action has arisen in another State or Territory or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time; an action thereon shall not be maintained against him in this Territory except in favor of a citizen thereof, who has held the cause of action from the time that it accrued.

Sec. 504. That an act to regulate proceedings by attachments in civil cases, approved December 10th, 1867, and all acts and parts of acts, heretofore passed and now existing, conflicting herewith, are hereby repealed, save and excepting the following portions of an act entitled "an act to regulate proceedings in civil cases in the courts of justice of the Territory of Montana, approved A. D. 1865. Title XX, "Proceeding in justices courts in civil cases;" Title XXI, "Forcible entry and unlawful detainer;" Title XVIII, "Courts of justice of this Territory."

Sec. 505. This act shall not be so construed as to affect any suit or suits that may be pending in any court or courts of this Territory at the time of the passage and approval of this act.

Sec. 506. This act shall take effect and be in force from and after its passage and approval.

[Approved Dec. 23, 1867.]

HeinOnline -- 1867 233 1867

AN ACT to authorize the County Commissioners of the several Counties of the Territory of Montana, to fund the debt of their respective Counties.

Nov. 27, 1867

Be it enacted by the Legislative Assembly of the Territory of Montana:

To issue bonds, interest payable semi-annually.

Sec. 1. That the county commissioners of the different counties of this Territory shall have in addition to the powers already conferred by law, authority to call in at any time when they shall deem it expedient for the interest of their respective counties, all outstanding orders against the Treasury of the county, and may issue bonds, with interest bearing coupons; payable semi-annually in lieu thereof.

Interest fifteen per cent. per annum.

Sec. 2. All bonds that may hereafter issue under the provisions of this act, shall draw interest at the rate of fifteen per cent. per annum, and no more; said interest to be payable semi-annually by the county treasurers of the different counties out of any moneys in the hand of said treasurer.

Sec. 3. The county commissioners of the different counties may set apart from the ordinary revenue of their respective counties, for the payment of outstanding bonds and the interest thereon, a certain amount annually; provided, that the sum annually set aside shall not exceed one-fourth of the outstanding bonds exclusive of interest; and, provided also, that the amount so set aside shall not at any time exceed one-fifth of the revenue of the county.

Sec. 4. All bonds issued under the provisions of this act shall be for sums not less than fifty dollars. They shall be signed, countersigned, and issued in the same manner provided for the issuing of county warrants.

Sec. 5. It shall be the duty of the county treasurer upon taking up county orders for the purposes in this act mentioned, to keep a record of the same, to cancel said orders, and to make a report thereof to the board of commissioners at each regular meeting of said board.

Payable within seven years from date of issue.

Sec. 6. The bonds authorized to be issued by this act shall be redeemable at the pleasure of the county any time after three years, and payable within seven years from the date of their issue.

Sec. 7. This act to take effect and be in force from and after its passage and approval.

[Approved November 22, 1867.]

HeinOnline -- 1867 234 1867

AN ACT entitled an act concerning Licenses.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There shall be levied and collected by the tax collector a license tax as follows: First, From each billiard table kept for public use, sixteen dollars per quarter. Second, From the manager or lessee of every theatre, five dollars per day, or fifty dollars per month; and for each exhibition of serenaders, opera or concert singers, minstrels, slight of hand performances, legerdemain and all other shows or exhibitions, the same as required for theatrical performances. Third, All dance houses or hurdy gurdy houses shall pay ten dollars per day, or one hundred dollars per month. Fourth, For each and every insurance company transacting business in this Territory, the sum of eighty dollars per year. Fifth, For each pawnbroker, twenty-five dollars per quarter. Sixth, From each keeper of an intelligence office, twenty-five dollars per quarter. Seventh, From each assayer of minerals or quartz rock, ten dollars per quarter. Eighth, Each professional man before practicing as such, all lawyers, dentists, physicians, surgeons, and all other professions, shall pay a license of sixteen dollars per annum; Provided, that all persons who draw any legal instrument, deed, power of attorney or other document for which he charges a fee shall be considered a professional man.

December 13, 1867.

Sec. 2. All keepers of livery and feed stables shall pay a license of fifteen dollars per quarter. All keepers of hay yards, corrals for feeding stock or selling hay, shall pay a license of ten dollars per quarter, and all ranchmen who keep or herd stock for hire, shall pay a license of ten dollars per quarter.

Sec. 3. Each person keeping a baker's or confectionary shop shall pay a license of five dollars per month; all barbers shall pay a license of fifteen dollars per quarter.

Sec. 4. Licenses shall be obtained by the persons, private associations or incorporations doing business in this Territory, engaged in any one or more of the following occupations, to-wit: In buying or selling foreign or inland bills of exchange, or in loaning money at interest, or in buying or selling notes, bonds or other indebtedness of private persons; or Territorial, county or city stocks, or indebtedness or stock of incorporated companies, or in buying, or selling gold dust or gold ore, silver bullion or gold or silver coins, keepers of savings banks, or engaged as common carriers in transmitting or carrying gold dust or gold or silver coin, or bullion, from one place to

HeinOnline -- 1867 235 1867

another for hire or profit, or engaged in receiving general or special deposits of gold dust, gold or silver coin or bullion, including all brokers, shall be divided in four classes, as follows: First, Those doing business in the aggregate to the amount of one hundred and fifty thousand dollars per quarter shall constitute the first class, and shall pay a license of seventy-five dollars per quarter. Second, Those doing business to the amount of one hundred thousand dollars and less than one hundred and fifty thousand dollars, per quarter, shall constitute the second class, and shall pay a license of sixty dollars per quarter. Third, Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, shall constitute the third class, and shall pay a license of forty-five dollars per quarter; fourth, those doing business amounting to less than fifty thousand dollars per quarter, shall constitute the fourth class, and shall pay a license of thirty-five dollars per quarter; said amount to be paid to the collector of taxes in the county in which the party applying therefor desires to or does transact any or all of the occupations specified in this section, and a separate license shall be obtained for each branch or separate house of business in the same county.

Sec. 5. All bankers or such persons or corporations as are engaged in buying and selling foreign or domestic bills of exchange or drafts shall be divided into four classes, as follows:

Those doing business to the amount of three hundred thousand dollars per month shall constitute the first class and shall pay a license of sixty-five dollars per month. All those doing business between the sums of two and three hundred thousand dollars per month shall constitute the second class and shall pay a license of fifty dollars per month. All those doing business between the sum of one and two hundred thousand dollars per month shall constitute the third class, and shall pay a license of forty dollars per month. And all those doing business in any sum less than one hundred thousand dollars per month shall constitute the fourth class, and shall pay a license of thirty-five dollars per month.

Sec. 6. Every person who has a fixed place of business, who may deal in goods, wares or merchandise, wines or distilled liquors, drugs or medicines, jewelry or ware of precious metals, shall pay a license as follows:

Those who are estimated to make average monthly sales of forty thousand dollars or more, shall constitute the first class. Those whose monthly sales are estimated between twenty-five and forty thousand dollars shall constitute the second class. Those whose monthly sales are estimated between ten and twenty-five thousand dollars shall constitute the third class. Those whose monthly sales are estimated between three and ten thousand dollars shall constitute the fourth class. Those whose monthly sales are estimated less than three thousand dollars shall constitute the fifth class. The first class shall pay a license of fifty dollars per quarter; the second class shall pay a license of forty dollars per quarter; the third class shall pay a license of thirty dollars per quarter; the fourth class shall pay a license of twenty-five dollars per quarter; the fifth class

HeinOnline -- 1867 236 1867

1868 4th Regular.pdf

shall pay a license of twenty dollars per quarter. Provided, that the sale of liquors or wines, licensed under this section, shall not be in less quantities than one gallon, and no license shall be issued for less than three months. All in-door auctioneers shall procure a license and shall pay therefor the sum of twenty dollars per month; and all auctioneers who shall sell upon the streets of any town in this Territory, goods, wares or merchandise, horses, mules, cattle, or other live stock, shall pay a license of twenty-five dollars per month; provided, no license shall be required for sale of goods on execution or sheriff's sale under attachment or order of any court.

Sec. 7. All keepers of houses of entertainment, restaurants, lodging houses, boarding houses, inns and taverns, where no intoxicating liquors shall be sold, shall pay a license as follows: First, those whose estimated quarterly receipts do not exceed one thousand dollars, four dollars per quarter; second, those whose estimated quarterly receipts exceed one thousand dollars and do not exceed two thousand, eight dollars per quarter; third, those whose estimated quarterly receipts exceed two thousand dollars and do not exceed three thousand dollars, twelve dollars; and for each additional thousand dollars of estimated receipts shall be added the sum of four dollars.

Sec. 8. All persons who dispose of any spiritous or malt liquors in quantities of less than one gallon, shall before the transaction of such business, obtain license, for which they shall pay thirty dollars per quarter; provided, that if such person shall not carry on such business within two miles of any town or city, such license shall be eight dollars per quarter.

Sec. 9. Every traveling merchant, hawker or pedlar who shall carry a pack or trunk, and shall sell goods, wares or merchandise shall pay a license of ten dollars per month; and every such person who shall deal in provisions not raised in this Territory, shall pay a license of eight dollars per month; Provided, That every pedlar or hawker traveling with a wagon or wagons, pack animal or pack animals, not dealing in products of this Territory, shall pay a license for the first wagon or pack animal of fifteen dollars per month, and for every additional wagon or pack animal, ten dollars per month.

Sec. 10. Every person who shall bring in or procure to be brought into this Territory one or more wagons, or one or more pack animals, loaded wih goods, wares, or merchandise, or provisions, not raised by himself in this Territory, or shall bring or procure to be brought into this Territory, upon steamboat, or other water craft navigating the waters of this Territory, goods, wares, or merchandise, or provisions, and shall sell the same or offer the same for sale, or consign the same to, or leave the same with any commission merchant, auctioneer, or any other person, for sale or on commission, or on storage and commission, shall be deemed for the purposes of this act a transient merchant: Provided, in all cases where taxes have been paid on such goods in this Territory, by any person having a receipt therefor, it shall not be required of such storage or commission merchant, or auctioneer, and shall pay a license as follows: First, for each wagon loaded as aforesaid, if such load do not exceed

HeinOnline -- 1867 237 1867

in value of the sum of one thousand dollars, five dollars; second, for each pack animal loaded as aforesaid, if such load do not exceed two hundred dollars, twenty-five cents; if such load do exceed in value the sum of two hundred dollars, then one half of one per cent. of the value of such excess shall be added; third, each transient merchant bringing or procuring to be brought, any goods, wares or merchandise or provisions into this Territory, upon any steamboat or water craft, who is required to pay license under this act shall pay for such license a sum equal to one per cent. on the value of such goods, wares, merchandise or provisions; Provided, that any person having once paid his proper license according to the provisions of this act, shall have a right to sell any goods, for the sale or disposal of which such license shall have been procured, either at wholesale or retail. For each pack animal, loaded as aforesaid, shall pay fifty cents for each animal.

Sec. 11. Any person bringing or procuring to be brought into this Territory, any drove or droves of cattle or horses, mules, asses, sheep or swine for sale after the first day of September of each year, shall pay a license tax as follows: For each head of cattle, horses, mules or asses, one dollar; for each head of swine, twenty-five cents; for each sheep, twenty-five cents. Such license shall be collected in the county where such stock is located.

Person paying license tax to have lien on stock for the same.

Sec. 12. If any person, who, under the provisions of section nine and ten of this act, is required to pay a license tax mentioned therein, shall, without first having procured and paid license, sell any goods, wares, merchandise or stock mentioned in either of such sections; the person or persons purchasing shall be responsible for the license tax thereon, and shall pay the same to the tax collector of the county in which such transaction was made, upon demand of such tax collector, and if such person fail or refuse to pay the same, then such tax collector shall levy upon and sell sufficient of such goods, wares, merchandise or stock, to pay such license tax, together with costs; such seizures and sale to be made in the manner prescribed by law for the collection of delinquent tax; Provided, that if any person having the custody of goods or stock liable to levy and sale under the provisions of this act, shall pay the license tax due from the owners of such goods or stock, then he shall have lien upon such property for the amount of such license tax so paid, together with reasonable compensation for trouble incurred in the premises, and may retain such amount out of any monies that may be or come into his hands belonging to such person, for whom such license tax was paid.

Sec. 13. Every brewer or manufacturer of malt or spirituous liquors, or manufacturer of pop beer, or drinks put up in bottles, shall pay a license of ten dollars per month.

Sec. 14. Every person who shall keep any banking game, or other game of chance, or gaming table wherein any money or representation of money is used, bet, or ventured at any game of chance or hazard, not prohibited by the laws of this Territory, shall pay a license of fifty dollars per month for each house so kept.

Sec. 15. Every butcher shall pay a license of seven dollars per

HeinOnline -- 1867 238 1867

1868 4th Regular.pdf

month; Provided. that any butcher carrying on business more than two miles from any city or town, and whose monthly receipts are less than one thouasnd dollars, shall pay seven dollars per quarter.

SEC. 16. Every keeper of a picture gallery, daguerrotypist, ambrotypist, photographist or other artist shall pay a license of ten dollars per quarter.

SEC. 17. Be it enacted that all incorporated roads, bridges or ferries, or water companies, or any other incorporated company not specified in the provisions of this bill, or any other company or association of persons taking or receiving toll, whose annual income shall reach the sum of two thousand dollars, shall pay a tax of twenty dollars per quarter; and those whose annual income shall reach five thousand dollars and not to exceed ten thousand dollars, shall pay a tax of forty dollars per quarter; and those whose annual income shall reach ten thousand dollars and not to exceed twenty thousand dollars, shall pay a tax of eighty dollars per quarter; and all those whose annual income shall exceed twenty thousand dollars and not exceed forty thousand dollars, shall pay a tax of two hundred and fifty dollars per quarter; and all [those] whose annual income shall exceed forty thousand dollars shall pay a tax of five hundred dollars per quarter.

President of chief officer four times each year to file a sworn statement with treasurer of county.

SEC. 18. Be it further enacted, that it shall be the duty of any corporate or other company receiving toll, to cause any president, secretary, chief officer, or directors of said company or companies, four times in each year, to file with the treasurer of the county in which said company is located, doing business, or in which they have their office, a sworn statement of all their receipts and expenditures; and it shall be the duty of said treasurer to examine said report, and shall have power to hear testimony for and against the same, and if he approve of the same he shall proceed to collect the tax imposed by this act upon said company or corporation, as provided by law in other cases: Provided this only refers to the carrying out of section seventeen of this act.

Any person making false report, sworn to, shall be deemed guilty of perjury.

SEC. 19. Be it further enacted, that any person required by the provisions of section seventeen of this act, to file the statement therein required, who is to swear to the same, knowing that said report is false or untrue in any material part, such person shall be deemed guilty of perjury, and upon conviction shall be imprisoned in the county jail or territorial prison not less than three nor more than five years.

Tax collector to require sworn statement of prisoners.

SEC. 20. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license required by the provisions of this act, and it shall be his duty to require each person to state, under oath or affirmation, the amount of business which he or the firm of which he is a member, or for which he is agent or attorney, or the corporation or association of which he is president or other officer, have done within the last preceding month or quarter; and in all cases where an underestimate has been made, the person making or procuring the same shall be made to pay double license for the next ensuing month or quarter. It shall be the duty of such tax collector to require all persons required to pay license

HeinOnline -- 1867 239 1867

under this act, as traveling merchants, as well as such persons as shall purchase or receive goods, wares or merchandise of such merchants, to make a statement under oath or affirmation as to the amount and value of all goods, wares and merchandise brought or procured to be brought into this Territory, or purchased and received by them, as well as the disposition thereof. All licenses procured under this act shall authorize the party procuring the same to transact and carry on business as provided in said licenses, within the county in which such license was obtained.

SEC. 21. That all male persons in this Territory who are now or who may hereafter be engaged in the laundry business, shall pay a license of ten dollars per quarter.

Person doing business without license to be deemed guilty of misdemeanor.

SEC. 22. Any person or persons who shall commence or continue to transact any business or to carry on any business, trade, occupation or profession, for the transaction of which a license is required by this act, without a proper license as herein required, shall, upon conviction thereof, be deemed guilty of a misdemeanor and be fined not less than ten dollars nor more than one hundred dollars; and whenever it shall appear to any justice of the peace, by the affidavit of any tax collector, that such offense has been committed, such justice shall issue his warrant for the arrest of such delinquent, and like proceeding shall be had thereon as in cases of misdemeanor prescribed by law; and such tax collector may proceed to recover the amount due for such license, in a civil action against such delinquent before any court of competent jurisdiction within such county, which action shall be prosecuted in the name of the Territory of Montana, and a writ of attachment may issue without bond given by the plaintiff against the property.

SEC. 23. Every person and company who shall bring and discharge from any steamer or other water craft, a cargo of goods, wares or merchandise, in any port or landing in this Territory, shall pay a license of fifty dollars for each cargo so discharged; provided, that all steamers on the Pen d'Orielle or Flat Head river, and all steamboats freighting from and to ports in this Territory shall pay a license of five dollars on each cargo discharged.

License to be granted for a year or less.

SEC. 24. Licenses may be granted under the provisions of this act for one year or less, at the option of the applicant; provided, no license shall be granted for a less time than mentioned in the rates of assessment of a license in this act.

Criminal action, party charged to produce license.

SEC. 25. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured the proper license unless he either produces it or proves that he did procure it, but he may plead in bar of the criminal action, recovery and payment by him in a civil action, of the proper license money, damages and costs, the money collected for license provided for in this and the preceding section shall be paid into the county treasury, sixty per cent for the use of the county and forty per cent for Territorial purposes.

SEC. 26. It shall be the duty of the Treasurer of each and every county in this Territory to collect the license as provided in this act.

HeinOnline -- 1867 240 1867

1868 4th Regular.pdf

SEC. 27. That all taxes pertaining to licenses not paid at the time this act shall be [go] in force, shall be collected under the provisions of prior existing laws.

SEC. 28. This act shall take effect and be in full force from and after the first day of January, 1868.

[Approved December 13, 1867.]

AN ACT providing for the purchase of a suitable safe for the office of Auditor and Treasurer of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the Territorial Auditor is hereby authorized and it shall be his duty to issue a warrant on the Territorial Treasurer for a sum not to exceed five hundred dollars, for the purpose of purchasing a suitable safe for the uses and benefits of the said offices of Auditor and Treasurer of this Territory.

SEC. 2. That the Territorial Treasurer is hereby authorized and it is made his duty to set apart any monies now in his office to the amount of five hundred dollars; or if there be not enough monies now in said treasury, amounting to five hundred, then to set apart a sufficient sum out of the first monies received therein, to make up the sum of five hundred dollars; which monies when received shall be applied by said Treasurer to the payment of said warrant.

SEC. 3. That upon the payment of said warrant by the Treasurer, over to the said Auditor, the said Territorial Auditor shall proceed to purchase a suitable safe for the uses and benefit of the said offices mentioned at the lowest rate possible; and if there shall remain any overplus in the hands of said Auditor after purchasing such safe out of the said sum of five hundred dollars, it shall be his duty, as soon as practicable thereafter, to deposit the overplus in the treasury office and take a receipt therefor; and the Auditor and Treasurer shall report their actions had under this act in their annual reports to the Legislative Assembly, as required by law.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved December 21, 1867.]

HeinOnline -- 1867 241 1867

AN ACT in relation to the appointment of Deputy District Attorneys.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. Be it further enacted, that the district attorney of the several judicial district of this Territory are hereby authorized to appoint deputy prosecuting attorneys in each county, except the counties of Meagher, Deer Lodge and Missoula, whose duty it shall be to prosecute all preliminary examinations in criminal cases and misdemeanor in said counties, and shall receive such fees as are allowed by law for such services, but in all cases where the prosecuting attorney of said district court can, it shall be his duty to be present in person at the final trial in court.

SEC. 2. That all laws or parts of laws conflicting with this act be and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

AN ACT to provide for the government of the Penitentiary of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SECTION 1. There is hereby created a board of Territorial prison commissioners to consist of three in number, which shall be elected immediately after the passage of this act, by the Legislative Assembly in joint convention, to be commissioned by the Governor, and shall hold their office for the term of two years from the time they enter upon the discharge of the duties of their office.

HeinOnline -- 1867 242 1867

SEC. 2. The board of commissioners shall have full and exclusive control of and over all the Territorial prison grounds, buildings, prisoners, prison labor, prison property and all other things belonging or appertaining to said prison, and shall establish such rules, regulations and by-laws for the government and regulation thereof, as they may deem proper, and shall, from time to time, visit the prison, examine into its affairs and government, and from personal observation and conference with the officers, change, alter or abolish the same, as in their judgment may be found necessary for the well being thereof.

SEC. 3. It shall be the duties of the commissioners as provided herein, to meet as soon as the Territorial prison shall have been constructed, or any portion thereof, and ready for the reception of prisoners, and organize the board of Territorial prison commissioners, take charge of the prisoners, and make rules and regulations for the government thereof as provided in this act.

SEC. 4. There is hereby created the office of warden, who shall be elected at the same time and in the same manner as is provided for the election of commissioners, and shall hold his office for two years, unless sooner removed for good cause shown.

SEC. 5. The warden shall, within twenty days before the expiration of each quarter, make out a complete statement of the probable or estimated amount of clothing, provisions, medicines and all other stores and necessaries, and the character and quality of the same, and make a requisition on the commissioners for such supplies, and they shall, as soon thereafter as possible, furnish or cause to be furnished the articles, provisions or stores thus required, or so much thereof, as they may deem necessary for the use of the prison during the ensuing quarter; Provided, that no supplies shall be purchased or articles furnished the prison at a greater price than the usual market rates for the articles, and provided further, that nothing herein contained shall be so construed as to prevent the commissioners from furnishing any necessary article at any time not enumerated in the quarterly requisition of the warden.

SEC. 6. All accounts for provisions, clothing, medicines, fuel, lights or other supplies or stores furnished to the Territorial prison, as prescribed in the preceding section, shall be presented to the warden, and if the articles therein enumerated shall have been received, he shall so certify; and the account so certified shall be delivered to the secretary of the board, and if the account be correct and the articles therein named were purchased or ordered by the Board, they shall allow the claim. All claims for salaries, repairs or labor, shall be certified to by the warden, presented to the board of commissioners, and if the same be allowed by them, the Territorial Auditor shall issue his warrant on the Territorial Treasurer for the amount.

SEC. 7. The board of commissioners may, whenever in their judgment it would be for the best interest of the Territory, advertise for sealed proposals for the furnishing of supplies to the Territorial prison; notice of the time and place of the letting of each contract shall be given for at least two weeks, in some newspaper published

within the Territory; such notice shall state the character, quality and quantity of the supplies required; and any person may bid for the furnishing of all or any part of the articles enumerated in the notice; provided, that no contract shall be for furnishing more than one year's supplies as estimated by the warden.

SEC. 8. The board of commissioners may, in their discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits and at hard labor, and furnish such convicts thus employed with any material that may be deemed necessary; and they shall have the exclusive direction of the employment of said prisoners, and may from time to time employ them in such manner as in their opinion will best subserve the interest of the Territory and the welfare of the prisoners.

SEC. 9. The Territorial prison is hereby declared to extend to and over any place or places of employment of the convicts without the wall or enclosure of the prison at which the convicts may be employed by order of the commissioners, as provided in this act.

SEC. 10. The warden shall be the executive officer, appoint all necessary help, and have the general superintendence of the business of the prison and prison labor, subject to the direction of the commissioners, and he shall keep or cause to be kept, a book, wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, the date of incarceration and the expiration of the term for which the prisoners therein confined were sentenced, and shall make out a correct quarterly report of the same, and file and record such report with the secretary of the board of prison commissioners, and shall securely and carefully file in his office all commitments of prisoners that may be sent to the Territorial prison, and keep and cause to be kept a correct account of any mileage that may be due to any sheriff or deputy for conveying prisoners to the Territorial prison, and shall give such sheriff or deputy a certificate of the number of miles thus traveled in conveying such prisoners, and the amount thus due, which receipt shall be sufficient evidence for the Territorial auditor to issue his warrant to said sheriff or deputy therefor.

SEC. 11. The commissioners and the warden of the prison are hereby required to receive all criminals sentenced to the Territorial prison by the authorities of the United States, and to keep them at hard labor, agreeably to the order of the court, pronouncing such sentence, until legally discharged therefrom; and the warden shall certify to the secretary of the Territory the expense of keeping all convicts thus sentenced.

SEC. 12. In case of a vacancy in the office of warden of the Territorial prison, occasioned by death, resignation, or otherwise, the board of prison commissioners shall, by appointment, fill such vacancy until the meeting of the Legislature.

SEC. 13. The warden shall, before entering upon the discharge of his duties as such officer, execute a bond of ten thousand dollars with two or more sufficient sureties for the faithful discharge of his duties, to be approved by the commissioners, which bond shall be given to the people of the Territory of Montana, and shall be depos-

HeinOnline -- 1867 244 1867

1868 4th Regular.pdf

ited with the Secretary of the Territory, and also take the constitutional oath of office.

SEC. 14. The warden shall receive a salary of two thousand dollars per annum. to be paid quarterly out of the Territorial Treasury; and all other employees, guards and attachees, shall receive such sum as may be allowed by the board of prison commissioners; provided that no warden or attachee shall enter upon their duties or receive pay unless so directed by the order of said prison commissioners.

SEC. 15. The said board of prison commissioners are hereby authorized to appoint a secretary of their board, which may be one of their number; and the board of commissioners shall hold a meeting every three months, and shall receive the sum of eight dollars per day, while sitting as a board, and shall receive thirty cents per mile for traveling to and from said sessions, to be paid out of the treasury of this Territory.

SEC. 16. This act shall take effect and be in force from and after its passage.

[Approved December 23, 1867.]

AN ACT amendatory of an act entitled "An act to regulate proceedings in civil cases in the courts of justice in Montana Territory," approved December 23d, 1867.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That section four hundred and sixty-three be so amended that wherein the section reads "five hundred dollars," shall be made to read fifty dollars in the place thereof.

SEC. 2. That section four hundred and sixty-eight of said act be so amended as to read, that the court may fine in the sum of fifty dollars and shall not have the power to imprison.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 24, 1867.]

HeinOnline -- 1867 245 1867

AN ACT to amend an act entitled "An act regulating the fees of officers, jurors and witnesses," approved Feb. 9th, 1865.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That the act regulating the fees of officers, jurors and witnesses, approved Feb. 9th, 1865, be so amended as to read in that sub-division relating to the fees of sheriff, as follows: For serving and returning summons, first party, $1.00; for each additional person so served, 50 cents; for advertising property for sale, $4.00; for serving writ with aid of posse, $10.00; for attending district court, per day, $5.00; for executing and acknowledging deed of sale of real estate, $6.00; for transporting prisoners, the actual costs necessarily expended for the same, to be allowed by the county commissioners of the proper county, as provided by law and the provisions of said act, for dieting prisoners, per day, $4.00, is hereby stricken out.

SEC. 2. That in said act in the sub-division relating to the recorders, be so amended as to read: For making abstracts of title, first conveyance, $1.00; for each subsequent conveyance, 50 cents; abstracts for original entries, each $1.25; for recording quartz claims, each, including certificate, $1.00.

SEC. 3. That said act be so amended as to read: The sheriffs, jurors, witnesses and all other officers, their fees allowed in all cases shall be at the rate of thirty cents per mile traveled.

SEC. 4. That the said act in that sub-division relating to the fees of prosecuting attorneys in which it reads "in all cases a docket fee of $5.00," be stricken out of said act so as not to allow said fee.

Sec. 5. That all the provisions of the said act to which this is amendatory, and all other acts or parts of acts inconsistent with this act, are hereby repealed; provided, that nothing in this act contained shall be so construed as to interfere in anywise with any item in the sub-divisions amended not expressly herein named.

Sec. 6. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

HeinOnline -- 1867 246 1867

1868 4th Regular.pdf

AN ACT to legalize the location of quartz claims in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any quartz claims that have heretofore been located according to law in any county of this Territory in good faith, and have been recorded upon any county record of any county, supposing the same to be in the proper county under the previously existing imaginary lines of the counties in this Territory, shall be deemed valid and sufficient.

SEC. 2. All claims that may be located hereafter shall be located in the proper county under law, and according to the present county lines of counties as designated by natural boundaries now existing.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

AN ACT to prevent the collection of illegal toll.

Be it enacted by the Legislative Assembly of the Territory of Montana:

SEC. 1. That any person or association of persons charging toll upon any road, bridge or ferry without authority of law, or who charge more toll than is allowed by their charter, shall be liable to the person or persons paying such illegal toll in three times the amount so paid, to be recovered in an action before any court having jurisdiction; and shall, in addition thereto, pay a fine of not less than fifty nor more than one hundred dollars, to be imposed and collected as fines in other cases, which fine shall be paid into the county treasury for the benefit of the school fund of the county where the offense is committed.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

HeinOnline -- 1867 247 1867

1868 4th Regular.pdf

AN ACT providing for holding regular terms of the Probate Court of Deer Lodge County at Phillipsburg in Deer Lodge County.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. The judge of the probate court of Deer Lodge county shall have authority to hold regular terms of the probate court at Phillipsburg, in Deer Lodge county, on the first Monday of May, July, September, November, January and March of each year; and all cases shall be tried and determined at said terms of the court, which are commenced at Phillipsburg, and none other; and all process issued by the judge of said court or the clerk thereof, if one shall be appointed by said court at Phillipsburg, shall be returnable at the said regular terms of said court, and shall have the same force and effect as if issued at the county seat; and the sheriff is hereby required to provide suitable rooms for the holding of the said court at Phillipsburg, as he is required to do at the county seat of said county.

SEC. 2. This act shall take effect and be in force from and after its passage.

[Approved December 23. 1867.]

AN ACT amendatory of an act entitled "An act concerning Crimes and Punishments."

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. That section sixty of an act entitled "An act concerning Crimes and punishments," approved in 1865, be so amended as to read as follows: Every person who shall feloniously steal, take and carry, lead or drive away, the personal goods or property of another, of the value of fifty dollars or more, shall be deemed guilty of grand

HeinOnline -- 1867 248 1867

1868 4th Regular.pdf

larceny, and upon conviction thereof, shall be punished by imprisonment in the Territorial prison for a term not less than one year nor more than fourteen years.

SEC. 2. All acts and parts of acts conflicting herewith be and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved Dec. 20, 1867.]

AN ACT repealing part of section 5, of an act entitled "An act relating to the discovery of gold and silver quartz leads, lodes or ledges, and of the manner of their location," approved Dec. 26, 1864.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. That so much of section 5th of said act as relates to and requires the stakes and inscriptions thereon to be replaced at least once in twelve months by the claimants on said leads, lodes or ledges, if torn down or otherwise destroyed be and the same is hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

AN ACT to incorporate the City of Helena.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SECTION 1. All that tract of land in the county of Edgerton,

HeinOnline -- 1867 249 1867

Territory of Montana, to-wit: Commencing at the junction of Oro Fino and Grizzly gulches, running thence northwesterly at right angles to the general course of Last Chance gulch one half mile; thence northeasterly parallel with Last Chance gulch two miles to a point one half mile west of the channel of Last Chance gulch; thence southeasterly and parallel to the first line one mile; thence southwesterly two miles to a point one half mile southeasterly of the junction of said gulches; thence northwesterly to the place of beginning, is hereby declared to be the city of Helena, which is hereby divided into four wards, to-wit: The first ward shall embrace all that part of the city lying south of Bridge street; the second ward shall embrace all that part of the city lying north of Bridge, east of Main and south of Broadway streets; the third ward shall embrace all that part of the city lying north of Bridge, west of Main and south of Edwards' streets; and the fourth ward shall embrace all that part of the city lying north of Broadway and Edwards' streets; and the inhabitants of said city are hereby constituted a body politic and corporate by the name and style of the City of Helena.

SEC. 2. For the government of the city there shall be a city council consisting of a mayor and board of aldermen, consisting of two members from each ward, to be styled the common council of the city of Helena, and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, complain and defend in all courts of law or equity; may purchase, hold and receive real or personal property in trust for the use of the city, and for such use may lease, sell or otherwise dispose of the same. They shall also have a common seal and alter the same at pleasure. They may also create by ordinance such police officers as they may deem expedient for the better government of the city. They shall be elected at the general city election, and hold their offices for one year and until their successors are elected and qualified. The mayor shall be ex officio recorder and justice of the peace.

SEC. 3. The general election for mayor and aldermen shall take place on the third Monday in January, 1868, and annually thereafter, and no person shall be entitled to vote at any city election, or be eligible to any office in said city, unless at the time of the election he is and has been a resident of said city for at least one year preceding the election, and a resident of the ward in which he votes, at least thirty days. The common council shall for each election appoint three judges and two clerks of election in each ward, and designate the place for holding the election, the polls of which shall open at nine o'clock a. m. and close at five o'clock p. m. of said election day.

SEC. 4. It shall be the duty of the clerks to take down in writing the name of each voter as his vote is deposited, and when the poll shall have been closed, the judges and clerks shall proceed immediately and canvass the votes in public, and within three days thereafter deliver to the persons receiving the highest number of votes for mayor and aldermen a certificate of their election, make out a statement of the number of votes cast for each person for said offices,

HeinOnline -- 1867 250 1867

1868 4th Regular.pdf

which statement, together with the poll list and ballots, shall be certified under cover of the common council.

SEC. 5. On the Saturday next after the election the common council shall proceed to ascertain from said statement what persons have received the highest number of votes, and the persons receiving the highest number of votes for said offices shall be declared elected; and all officers elected or appointed shall qualify within one week after their notification of election or appointment. In case they fail so to do, said office shall be declared vacant, and the common council shall proceed to fill the same by appointment; and all vacancies occurring by death, resignation or otherwise, shall be filled by the common council, and the person appointed shall hold his office during the residue of the term for which the officer was elected.

SEC. 6. The common council shall meet on the first and third Mondays of each month. The mayor may call special meetings at any time by causing a written notice thereof to be served upon each member of the common council. A majority of the council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members. They shall determine the rules for the government of their proceedings, and shall be the judges of the qualifications and election of their own members. All meetings of the council shall be public. Each member present shall have a vote, and the ayes and nays shall be entered upon the journal whenever requested by the mayor or a member of the council. They shall cause to be kept a journal of their proceedings, which shall during all business hours be open to the inspection of the public.

SEC. 7. It shall be the duty of the board of aldermen, at their first meeting after the annual election, to elect a president from their own body, who shall preside at their meetings, and possess all the powers and perform all the duties of the mayor during his absence, disability or a vacancy in said office. They shall provide for the accountability of all officers elected or appointed under this charter, by requiring of them sufficient security for the faithful performance of their duties, to publish semi-annually in a newspaper published in the city a full and detailed statement of the receipts and disbursements of the city during the six months previous; and it shall be the duty of every alderman of the city to attend the regular and special meetings of the council; to act upon committees when appointed thereto by the mayor, and to aid, to the extent of their ability, in maintaining the peace and good order of the city, and in enforcing the laws and ordinances thereof. The members of the common council shall receive no compensation whatever for their services; and if any alderman elected or appointed shall remove from the ward from which he was elected or appointed, his office shall be declared vacant.

SEC. 8. The Common Council shall have power to make laws and ordinances not repugnant to the constitution of the United States or the laws and organic acts of the Territory of Montana; to levy and collect taxes on all real estate within the city excepting county buildings, churches, school houses and charitable institutions, which

HeinOnline -- 1867 251 1867

1868 4th Regular.pdf

tax shall not exceed one cent on the dollar of the assessed valuation thereof, except as provided in section nine of this charter; to lay out, extend and alter the streets, alleys and sidewalks; provide for the grading, draining, cleaning, widening, lighting or otherwise improving the same; to provide for the prevention and extinguishment of fires; to determine what are nuisances and prevent or abate the same; to fix a license tax upon such professions, trades, occupations or business as they may deem just and proper; to prohibit and suppress all disorderly houses and houses of ill fame; to provide necessary buildings for the use of the city; to prevent the spread of disease; to restrain riots and riotous assemblages; to fix and prescribe the punishment for the breach or violation of city ordinances to make all contracts and agreements for the benefit of the city, (provided they shall at no time contract an indebtedness to exceed the sum of twenty thousand dollars, to restrain horses, cattle, hogs, sheep and dogs from running at large; to appropriate to the use of the city all fines, penalties and forfeitures for the breach of ordinances; to appropriate money for any item of city expenditure; to punish members for disorderly conduct, and expel them for cause, by a vote of three-fourths of their members.

SEC. 9. Real estate may be sold for taxes or assessments due the city, in such manner as the Common Council by ordinance may prescribe. Special assessments may be made by ordinance for the opening, grading, paving, planking, draining or otherwise improving any street, alley or sidewalk, upon the lot or parts of lots to be benefitted by the proposed improvement, and the Council shall have power to provide for the manner of assessing and collecting the same.

SEC. 10. Every ordinance which shall have been passed by the Common Council shall, before it becomes effective, be presented to the Mayor for his approval; if he approves it, he shall sign it; if not, he shall return it with his objections in writing to the Council, who shall cause such objections to be entered at large upon the journal, and shall proceed at once to consider the same or appoint a time when they shall be considered; if after such consideration three-fourths of all the Aldermen shall vote in favor of the ordinance, the same shall thenceforth be in full force and effect notwithstanding the objections of the Mayor. If any ordinance shall not be returned by the Mayor within seven days after it shall have been presented to him, the same shall then become of force and effect the same as if the Mayor had signed it. The enacting clause of all city ordinances shall be, "Be it ordained by the Common Council of the city of Helena," and all ordinances shall within ten days after they shall have been duly passed, be published in a newspaper published in said city and shall not be in force until they have been published as aforesaid.

SEC. 11. It shall be the duty of the Mayor to communicate to the Common Council at their second meeting after the general election, a statement of the condition of the city in relation to its government, finances and improvements; to recommend to the Council the adoption of all such measures connected with the health, cleanliness and ornament of the city, and the improvement of its government and

HeinOnline -- 1867 252 1867

1868 4th Regular.pdf

finance as he may deem expedient; to be vigilant in causing the laws to be executed; to exercise a supervision over the conduct of subordinate officers; to preside at all meetings of the Common Council when present, and in case of a tie, and in no other, shall have the casting vote; and he is authorized to call on every male inhabitant of the city over the age of eighteen years to aid in enforcing the laws.

SEC. 12. In case of a tie vote for Mayor or Alderman, the same shall be decided by the persons so tied by lot; and in all contested elections the Common Council shall decide the same, but appeals therefrom may be taken to the District Court.

SEC. 13. Every officer of the city shall, before he enters upon the discharge of his duties, take and subscribe the oath of office prescribed by law, which shall be filed with the Common Council.

SEC. 14. All judges and clerks of election before they enter upon the discharge of their duties, shall take and subscribe the following oath: "We and each of us do solemnly swear that we will faithfully discharge the duties of judges and clerks of election, and that we will studiously endeavor to prevent fraud in conducting the same." They shall have power to administer oaths to voters when challenged, and any person who shall have voted and taken an oath that he was legally entitled to cast such vote, if it shall be ascertained that he or they were not so entitled, they shall be subject to all the pains and penalties, and may be prosecuted in the District Court in the same manner as in other cases of perjury.

SEC. 15. F. B. Miller, W. C. Gillette, Warren Toole, John McCormick and R. Lawrence are hereby constituted and appointed to act as commissioners to provide for holding the first election herein appointed. They shall appoint three judges and two clerks of election in each ward, and fix the place for holding the same, and give notice thereof in a newspaper published in Helena; and at said election to be held on the third Monday in January, A. D. 1868, there shall be submitted to the qualified electors under this act, the question of accepting or rejecting this charter, and the ballots shall be in the following form, "for the charter," and "against the charter;" if a majority of the votes so cast be for the charter the act shall remain in full force, and the commissioners shall proceed to declare the election of officers as hereinafter provided; should a majority of the votes so cast be against the charter this act shall be null and void.

SEC. 16. The commissioners herein named shall assemble on the first Saturday after the election, and canvass the returns thereof, and should a majority of the votes cast be for the charter, they shall then declare the persons receiving the highest number of votes for Mayor and Aldermen duly elected under the authority of this act.

Approved December 24, 1867.

HeinOnline -- 1867 253 1867

AN ACT to define the duties of Territorial Superintendent of Public Instruction.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. It shall be the duty of the Territorial Superintendent of Public Instruction to prescribe the course of study, the text books to be used and all needful rules and regulations for all public schools in this Territory, and to exercise over the said public schools such general supervision as he may deem essential.

SEC. 2. He shall prepare and cause to be printed, registers, blank forms and regulations for making all reports, and shall cause the same, together with such information and instructions as he may deem conducive to the proper organization and government of the common schools and the due execution of their duties by school officers, to be transmitted to the officers and persons intrusted with the execution of the same; he shall cause to be printed in pamphlet form a sufficient number of all school laws to supply each school officer in the Territory, with at least one copy thereof; provided, that the clerks of the several school districts in the several counties of this Territory are hereby required to report according to law, to the county superintendents of their respective counties, on or before the twentieth day of April and October of each year; and provided further, that all acts and parts of acts heretofore passed requiring the county treasurers of the several counties to pay over school monies to the county superintendent, be and the same are hereby repealed.

SEC. 3. That it shall be the duty of the superintendent of public instruction to see that the county superintendents shall draw and distribute all monies in the treasury of their several counties as is now prescribed by law, and report the same in his annual report.

SEC. 4. The county superintendent shall be required to report to the territorial superintendent at least semi-annually; such report shall specify the number of children between the ages of four and twenty one years, in his county; the number of schools taught; the amount of money and how expended; the number of qualified teachers employed and the average number of pupils in attendance, and such other information as may be required by said territorial superintendent.

SEC. 5. The territorial superintendent shall submit to the Governor, who shall lay the same before the Legislature, an annual report, containing, first, a statement of the condition of the

HeinOnline -- 1867 254 1867

1868 4th Regular.pdf

common schools of the Territory; second, estimates and accounts of the expenditures of the school money and a statement of the apportionment of school monies made; third, all such matter relating to his office, and all such plans and suggestions for the improvement of the schools and the advancement of public instruction in the Territory as he shall deem expedient.

SEC. 6. He shall keep his office at such place where there is a post-office, and he shall give notice of his place of residence by publication for at least three successive weeks in some newspaper published in the Terriotry, as may be most convenient to him; and he shall receive a salary of seven hundred dollars per annum, which shall be paid quarterly out of the Territorial treasury.

SEC. 7. All necessary expenditures of money incurred by the superintendent of public instruction in the discharge of his official duties, shall be paid out of any funds in the treasury not otherwise appropriated; and the Territorial Auditor is hereby authorized to issue his warrants on the Treasurer for the same.

SEC. 8. This act to take effect and be in force from and after its passage.

[Approved December 24, 1867.]

AN ACT to repeal an act to Incorporate the City of Nevada.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. That an act entitled "An Act to incorporate the City of Nevada," passed at the first Legislative Assembly of this Territory, and the act amendatory thereto, be and the same are hereby repealed.

SEC. 2. This act to take effect and be in force from and after its passage.

[Approved December 24, 1867.]

AN ACT to provide extra compensation to the Secretary of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. The salary of the Secretary of the Territory of Montana is hereby increased in the sum of one thousand dollars, to be paid quarterly out of the territorial treasury.

SEC. 2. The Territorial Auditor is hereby directed to issue his warrant in favor of said Secretary on the Treasurer for such sum, as provided in the first section of this act.

SEC. 3. This act to take effect and be in force from and after its passage.

[Approved December 24, 1867.]

HeinOnline -- 1867 255 1867

AN ACT to amend an act entitled "An act relative to Elections."

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. That section three of an act entitled "An act relative to elections" be so amended as to read as follows: A general election shall be held in the several counties, townships or precincts in this Territory on the first Monday of August of each year; at which election shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for. The election of delegate and other officers as may be provided for, shall take place on the first Monday of August, A. D. 1869, and every two years thereafter.

SEC. 2. All acts and parts of acts conflicting herewith are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage and approval.

[Approved December 24, 1867.]

AN ACT to promote the agricultural, mechanical and mineral interest of Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. That A. J. Snider, Green Clay Smith and James Tufts, Andrew McHesser, of Madison county; J. B. Campbell, Philip Thorp and B. F. Robinson, of the county of Gallatin; Frank Lowry, Peter Whaley and Wm. Davenport of the county of Meagher; Murray Nicholson, Henry A. Kennerly and W. T. Stocking, of the county of Choteau; J. F. Forbis, W. E. Cullen, Jr., and James King, of the county of Edgerton; C. P. Higgins, Tyler Woodward, Harry Lent and John C. Caldwell, of the county of Missoula; Wm. L. Ir-

HeinOnline -- 1867 256 1867

1868 4th Regular.pdf

win, Thomas Prouse and L. P. Williston, of the county of Deer Lodge; Martin Barret, H. G. Smith and Wm. Orr, of the county of Beaverhead; James McFarland, Wellington Stewart and Wm. Vantilburgh, of Jefferson county; together with their successors, be and the same are hereby constituted a body politic with the name and style of the Montana Agricultural, Mechanical and Mineral Association, with the right of suing and being sued, pleading and being impleaded, hold, possess and transfer real and personal estate.

SEC. 2. Be it further enacted, that the incorporators herein mentioned shall elect a board to be denominated the Board of the Montana Agricultural, Mechanical and Mineral Association, said board to consist of seven members. The said board herein provided for shall on or before the first day of June of each year, meet in convention and elect a president, one secretary, (provided he is not of the board) one treasurer, (provided he is not of the board) and one corresponding secretary, (provided he is not of the board), and it shall be the duty of the treasurer to give bonds in the sum of ten thousand dollars for the faithful discharge of his duties, the sureties to be approved by the president of the board and the bond filed with the secretary of the board. It shall be the duty of the secretary to keep a journal of all the proceedings of the meetings of the directors or board of the association, and his books shall be subject to inspection at all times to the incorporators or board. The corresponding secretary shall keep a true record of all his correspondence touching the interest of the association, and hold his books subject to inspection by those who may have a right to examine the same. The president shall preside at all meetings of the board, but shall not vote on any question except in case of a tie; then it shall be his duty to vote. The proceedings of all meetings shall be kept by the secretary in a book prepared for that purpose, and whenever demand by one third of the board, the ayes and noes shall be called and the secretary shall keep a record thereof.

SEC. 3. Be it further enacted, the board of the association may establish and direct annual stated exhibitions at such times and places as they may choose, and shall have the right to prepare grounds, amphitheatres, booths, stalls, halls, &c., &c., for the accommodation and comfort of citizens and the exhibition of stock, mechanical instruments, agricultural productions and minerals.

SEC. 4. Be it further enacted, the association shall pay into the treasury of the Territory as a license for such annual exhibition, the sum of one hundred dollars; and may have the privilege of charging for gate entrance, to each person on foot, twenty-five cents; for each person on horseback, fifty cents; for each person in buggy or carriage, omnibus or wagon, twenty-five cents; for each buggy, carriage, omnibus or wagon drawn by two horses, one dollar; for each buggy drawn by one horse, fifty cents; for each carriage, buggy, wagon or omnibus, or other vehicle drawn by more than two horses, one dollar and fifty cents; for each of the horse kind entered for exhibition, five dollars; for each of the cow kind, five dollars; for mules or asses, five dollars each; for hogs, each two dollars and fifty cents; for sheep, each, one dollar; for any kind of poultry,

HeinOnline -- 1867 257 1867

one dollar per pair; for wheat, barley, oats, or other small grain, one dollar per sample; for vegetables of various kinds, one dollar per sample; for minerals of all kinds, one dollar per sample; for all mechanical implements over fifty dollars in value, five dollars; for all mechanical implements under fifty dollars in value, two dollars and fifty cents. The foregoing gate and entrance fees to be paid in United States currency.

SEC. 5. Be it further enacted, the president, together with the board of directors, shall have power or authority to pass such by-laws and constitution for their government, not inconsistent with this act, as they may choose; provided, that at any time they may increase or diminish gate entrance fees, rents for booths, stables, &c.; provided further, that at no time the fees shall exceed twice the amount numerated in this act.

SEC. 6. This act shall take effect and be in force from and after its passage.

[Approved December 24, 1867.]

AN ACT to regulate proceedings and define the jurisdiction of the Probate Courts of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SECTION 1. The courts held by the probate judges in this Territory shall be denominated probate courts, and shall have the jurisdiction both civil and criminal conferred by this act.

SEC. 2. Probate courts shall have jurisdiction of the following cases: First, In all civil actions where the amount claimed does not exceed the sum of five hundred dollars. Second, Of actions to recover the possession of personal property, where the value of such property does not exceed five hundred dollars. Third, Of all actions for the foreclosure of any mortgage or lien on personal property where the value of such property does not exceed five hundred dollars. Fourth, Of an action to determine the right to a mining claim and for damages to the same when the damages claimed do not exceed five hundred dollars; Provided, however, the jurisdiction conferred by this section, shall not extend to a civil action in which the title to real property shall come in question.

HeinOnline -- 1867 258 1867

1868 4th Regular.pdf

SEC. 3. The probate courts shall also have jurisdiction of all misdemeanors within their jurisdiction punishable by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, or by both such fine and imprisonment; and of all crimes not requiring the intervention of a grand jury.

SEC. 4. There shall be no terms in the probate courts. They shall be always open, except that the probate judge of Deer Lodge county shall hold terms as provided by law, at Phillipsburg, in said county, and may hold open court the residue of the time at the city of Deer Lodge in said county.

SEC. 5. The jurisdiction of the probate judges shall be co-extensive with the limits of the county in which they are elected, and no other.

SEC. 6. The time of service of summons in the commencement of civil action in the probate courts, shall be not less than four days from the time of filing the complaint.

SEC. 7. The provisions of an act entitled, "An act to regulate proceedings in civil cases in the courts of justice of Montana Territory," as far as applicable, and not in conflict with the provisions of this act, shall be applied and enforced in all the probate courts of this Territory.

SEC. 8. This act to take effect and be in force from and after its passage.

[Approved December 23, 1867.]

AN ACT providing for the payment of jurors, witnesses and officers in Montana Territory.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. No security for costs nor deposits of money shall be required by any justice of the peace or other officer, witness or juror, except as provided in this act, nor shall they refuse to act.

SEC. 2. No witness shall be compelled to attend court out of the county in which he resides, until the party requiring his attendance shall have tendered to such witness the travelling expenses allowed by law, and the fee for one day's attendance at court, except in criminal cases.

SEC. 3. It shall be the duty of the courts to tax the costs, including the jury fees, against the unsuccessful party or parties at law.

SEC. 4. The only costs that shall be hereafter taxed against the

HeinOnline -- 1867 259 1867

counties shall be the costs for the pay of jurors required to attend court by law, and in criminal cases wherein the Territory is plaintiff at law. But in all cases where said jurors are required to set upon cases of civil action, the fees of jurors during the time thus consumed, shall be paid by the unsuccessful party or parties in said civil action.

SEC. 5. If any party or parties to an action before a justice of the peace shall demand a jury, the justice of the peace shall require said party or parties to deposit money sufficient to pay the costs and fees accruing from the summoning and setting of said jury, or shall give bond with approved security, in a sufficient amount for the payment of said costs and fees, and the same shall be taxed against and recovered from the unsuccessful party or parties in said action.

SEC. 6. If no jury is demanded, the justice shall proceed to a hearing and determination, being at all times subject to an appeal.

SEC. 7. This act to take effect and be in force from and after its passage.

[Approved November 20, 1867.]

AN ACT to amend an act entitled "An act to regulate proceedings in civil cases in courts of justice of the Territory of Montana," passed April 12, 1866.

Be it enacted by the Legislative Assembly of the Territory of Montana.

SEC. 1. The plaintiff at the time of filing his complaint and issuing summons thereon, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be awarded, unless the defendant give security to pay such judgment, in the following cases: First, in an action upon a contract, express or implied, for the direct payment of money or specific personal property; which contract was made or is payable in this Territory, and is not secured by mortgage, lien or pledge upon real or personal property, or if so secured, that such security has been rendered nugatory by the act of the defendant; second, in an action upon a contract, express or implied, against a defendant not residing in this Territory, or foreign corporation; third, upon any express or implied contract for the payment of money or property, made out of this Territory and not barred by any statute of limitation of this Territory.

HeinOnline -- 1867 260 1867

SEC. 2. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, showing: First, that the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all legal set-offs or counter claims, upon a contract express or implied, for the direct payment of money or specified personal property; or, second, that the defendant is indebted to the plaintiff, specifying the amount of such indebtedness as near as may be, over and above all legal set-offs or counter claims, and that the defendant is a non-resident of this Territory or is a foreign corporation; or, third, that the contract was made out of this Territory, and is not barred by any statute of limitation in force in this Territory; that the sum for which the attachment was asked is an actual bona fide existing debt due and owing from the defendant to the plaintiff, and that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor or creditors of the defendant.

SEC. 3. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff in a sum in all cases at least double the demand of the plaintiff, and not less in any case than two hundred dollars, with sufficient sureties, which sum may be increased at the pleasure of the court, in all cases to a sum sufficient to cover all costs in the case and damages the defendant may sustain, conditional that if the defendant recover judgment, or if the attachment should be dismissed, the plaintiff will pay all costs that may be awarded to the defendant and the damages which the defendant may sustain by reason of the wrongful issuing of the attachment, not exceeding the amount specified in the undertaking.

SEC. 4. The writ shall be to the sheriff of any county in which the property of the defendant may be found, and requiring him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs; in which case the sheriff is authorized to take such deposit or undertaking. Several writs may be issued at the same time to the sheriffs of different counties.

SEC. 5. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached and, if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 6. The sheriff to whom the writ is delivered shall execute the same without delay; and if the undertaking mentioned in the preceding section of this act be not given as follows: First, real property shall be attached by leaving a copy of the writ with the occupant thereof, or if there be no occupant, by posting a copy in a conspicuous place thereon and filing a copy, together with a description of the property attached, with the recorder of the county, ex-

cept quartz claims or interest in any quartz lode, which shall be attached, by posting in one of the most public places in the township or district wherein the same is located, a copy of the writ together with a description of the quartz property attached, and by filing with the recorder of the county a copy of the same. Second, personal property capable of manual delivery shall be attached by taking it into custody. Third, stock or shares or interest in stock or shares of any corporation or company, shall be attached by leaving with the president or other head of the company, or the secretary, cashier or managing agent thereof, a copy of the writ and a notice stating the stock or interest of the defendant is attached in pusuance of such writ. Fourth, debts and credits and other personal property not capable of manual delivery shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, a copy of the writ and a notice of the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance to such writ; and from the time of such levy, as provided in this section, the same shall be and remain a lien upon the property attached.

SEC. 7. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control, any credits or other personal property belonging to the defendant, or his owing any debt to the defendant, the sheriff shall serve on such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance to such writ.

SEC. 8. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of the notice, as provided in the last two sections, shall be (unless such property be delivered to or such debt be paid to the sheriff) liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

SEC. 9. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge in vacation, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required and compelled to attend for the purpose of giving information respecting his property and be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon.

SEC. 10. If it appear that a garnishee, at or before his garnishment, was possessed of any money or property of the defendant, or was indebted to him, the court, or judge, in vacation, may order the delivery of such money or property, or the payment of the amount

HeinOnline -- 1867 262 1867

owing by the garnishee to the sheriff, or into court at such time as the court may direct; or may permit the garnishee to retain the same, upon his executing a bond to the plaintiff, approved by the court or the judge in vacation, to the effect that the property shall be forthcoming or the amount paid, as the court may direct. Upon a breach of the obligation of such bond, the plaintiff may proceed against the obligors therein by suit thereon in any court of competent jurisdiction.

SEC. 11. If such garnishee fail to deliver such money or property or shall fail to pay the amount owing by him to the sheriff, at the time prescribed by said court or judge, or to pay the same into the court at such time as the court shall direct, or in case he fail to execute the bond prescribed in the preceding section, then it shall be the duty of said court or judge to render judgment against said garnishee for the amount of money, or the value of the property in his hands; provided, that said judgment shall in no case exceed the amount of plaintiff's demand, with interest and cost, which said judgment shall be referred as other judgments and money, when collected shall be subject to the future order and direction of said court or judge; provided, that no such money shall be paid to the plaintiff by the direction of said court or judge until the plaintiff shall have obtained judgment against said defendant, and then only to the amount of said plaintiff's judgment, with the interests and costs thereon, and the residue, if any, shall be paid over to the defendant or his legal representatives.

SEC. 12. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debits and credits attached, he shall request at the time of service, the party owing the debts or having the credits, to give him a memorandum stating the amount and description of each; and if such memorandum be refused he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credits; but such certificate shall not be conclusive evidence of the facts therein stated, nor shall it in any case prevent or excuse the party giving the same from being examined under oath, touching the property, money, debts or credits in his possession or under his control.

SEC. 13. If any of the property attached be perishable, the court or judge in vacation shall make an order for the sale of the same, which said property shall be sold by the officer having the same in possession, in the same manner in which such property is sold on execution; and the proceeds of such sale shall, with the other property in his hands, be retained by him to answer any judgment recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment; debts and credits attached may be collected by him if the same can be done without suit. The sheriff's receipt shall in all cases be sufficient discharge of the amount paid.

SEC. 14. If judgment be recovered by the plaintiff the sheriff or

other officer shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subject to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose. First, By paying to the plaintiff the proceeds of all sales of perishable property sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second. If any balance remain due and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hand. Notice of the sale shall be given, and the sale conducted as in other cases of sales on execution.

SEC. 15. If, after selling all the property attached by him, remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases; whenever the judgment shall have been paid, the sheriff or other officer, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 16. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to any section of this act, or he may proceed as in other cases, upon the return of any execution.

SEC. 17. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and moneys collected by the sheriff, or deposits made by defendant, and all the property attached, remaining in the sheriff's hands shall be delivered to the defendant or his agent; the order of attachment shall be discharged, and the property released therefrom.

SEC. 18. Whenever the defendant shall have appeared in the action, he may apply upon reasonable notice to the plaintiff, to the court in which the action is pending, or the judge thereof, for an order to discharge the same, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands shall be released from the attachment and delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 19. Upon such application, the defendant shall deliver to the court, or judge, an undertaking executed by at least two sureties, residents of the district, to the effect that the sureties will, on demand, pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff on such application before the judge or court; and the property attached shall be released from the attachment.

SEC. 20. The attachment may be dissolved on motion made in

HeinOnline -- 1867 264 1867

1868 4th Regular.pdf

behalf of the defendant at term time, or in vacation; if made in vacation, upon giving plaintiff five days previous notice in the following cases: First, When the bond or affidavit on which the same was founded, shall be adjudged by the court, or judge in vacation or by the probate judge as aforesaid, to have been insufficient.

SEC. 21. In all cases when property or effects have been attached the defendant or any creditor of the defendant interested, may file a plea, in the nature of a plea, in abatement under oath, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out.

SEC. 22. Upon such issue the plaintiff shall be held to prove that the facts alleged by him in said affidavit as the grounds of attachment at the time of the using of the writ of attachment.

SEC. 23. If the issue be found against the plaintiff, the attachment shall be dismissed at the cost of the plaintiff, and his sureties shall thereafter be liable upon the bond for all damages sustained by the defendant in consequence of the issuing of the attachment.

SEC. 24. From any order dissolving or refusing to dissolve any attachment or from any other special order or proceedings in the cause materially affecting the rights of either party, appeals shall be allowed in the same manner and with like effect as is now provided by law for appeals on final judgments.

SEC. 25. The sheriff or other officer shall return the writ of attachment with a certificate of his proceedings endorsed thereon attached thereto. The provisions of this act shall not apply to any attachments already commenced, but so far as such writs of attachments may be concerned, the existing laws of this Territory shall be deemed in full force and effect.

SEC. 26. That justices of the peace and probate courts shall have the power to issue attachments under the provisions of this act.

SEC. 27. All acts and parts of acts conflicting with this act be and the same are hereby repealed.

SEC. 28. This act shall take effect and be in force from and after its passage.

[Approved December 10, 1867.]

HeinOnline -- 1867 265 1867

1868 4th Regular.pdf

HeinOnline -- 1867 266 1867

1868 4th Regular.pdf

MEMORIALS AND JOINT RESOLUTIONS

JOINT MEMORIAL.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled.

Your Memorialists, the Legislative Assembly of the Territory of Montana, would respectfully represent that as near as can be ascertained the Territory of Montana has within its limits from fifty to sixty thousand persons, with a continual increase by immigration daily— having unsurpassed mineral wealth, with ample and extensive agricultural resources, sufficient in extent and richness when brought under cultivation to support millions of inhabitants. That she will be hereafter as heretofore progressive in developing her inexhaustible beds of precious metals, and by remunerative industry reclaim her beautiful and fertile valleys, coursed by living waters, surrounded with pure air and a salubrious climate.

Your Memorialists, convinced that a territorial government is inadequate for the protection of the people, and believing that it will be for the interest of the United States as well as the Territory of Montana that a permanent State government, republican in form, should be organized, securing the blessings of life, liberty, and property to all, as soon as the same can be fairly and lawfully accomplished, would therefore respectfully ask the Senate and House of Representatives of the Congress of the United States, to pass an act authorizing and enabling the citizens of Montana to call a convention to form a constitution preparatory to her admission into the Union on terms of equality with the other States.

The Governor of this Territory is hereby requested to transmit a copy of this memorial to the Senate and the House of Representatives of the Congress of the United States, and one copy to the Hon. James M. Cavanaugh, our Delegate to Congress.

[Approved December 9, 1867.]

HeinOnline -- 1867 267 1867

1868 4th Regular.pdf

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled.

Your Memorialists, the Council and House of Representatives of the Territory of Montana in legislative assembly convened, respectfully represent that during the latter part of the year 1866 and the spring of 1867, the people of this Territory residing in those counties situated nearest the Indian countries on the Yellowstone and Big Horn, were threatened with an invasion of the hostile Indians of those regions; and so imminent was the danger that many of the residents of Gallatin county, the most prosperous agricultural region of the Territory, were compelled to abandon their farms and flee for protection to the cities in the interior, as shown by petitions hereto annexed.

That the Executive of this Territory did telegraph to the war department asking for instructions, and in pursuance of said instructions obtained through orders of the war department to General Sherman, did raise, equip and send to the threatened quarter for its protection about five hundred men; and owing to the continuance of the danger, the said force was kept on duty on the outskirts of the settlement for a period of six months, as shown by statements hereto annexed.

That by the maintenance of so large a force for the period named, together with the equipments, horses, provisions, ammunitions, &c., purchased for the same, a considerable debt has been incurred, which your memorialists believe from documents in possession of the Governor, copies of which the Executive is requested to transmit herewith, is justly chargeable to the United States, amounting to about eleven hundred thousand dollars.

The purchases made whereby this debt was incurred, in the opinion of your memorialists, derived from a report of a committee appointed to enquire into this matter, a copy of which is herewith transmitted, were made at reasonable figures and in accordance with the army regulations of the United States; and as many of our citizens who have furnished the bulk of the aforesaid provisions, equipments, &c., are suffering from the same not being paid for, your memorialists would therefore most respectfully pray your honorable body to appropriate the above sum for the payment of the aforesaid debt.

[Approved December 11, 1867.]

To the Honorable Senate and House of Representatives of the United States of America in Congress assembled:

We, your Memorialists, the Legislative Assembly of the Territory of Montana, do respectfully represent to your honorable body, That all that portion of Montana Territory known as the Blackfeet country, has never been treated for by the general government and consequently the Indian title thereto not extinguished, and

HeinOnline -- 1867 268 1867

1868 4th Regular.pdf

Whereas, Settlements have been made in various parts of said Blackfeet country by an industrious white population, comprising a farming, mining and mercantile people, who are anxious to have the country in which they reside ceded to the government in order that their claims may be surveyed and thereby acquire title under the operation of the pre-emption and homestead laws of the United States; and,

Whereas, In the stipulations of a treaty concluded in the fall of 1865, by General Thomas F. Meagher, L. E. Munson and Gad. E. Upson, Commissioners on the part of the United States, have been utterly disregarded by the general government, the Blackfeet Indians have accepted the alternative of war. Their choice under the circumstances no one doubts and but few can blame; and,

Whereas, The constant new discoveries of gold deposits in the northern portion of our Territory, on the tributaries of the Missouri river are attracting general attention, and unless measures are taken in the right direction by the government, the development of the mineral and agricultural wealth of the northern portion of Montana will be seriously retarded and a general Indian war, with all its horrors, in immediate prospect.

We would, therefore, most earnestly urge the adoption of the policy heretofore pursued towards the Indians by the government, and that an appropriation be made by Congress for the purpose of carrying into effect a treaty with said Blackfeet Indians.

And your Memorialists do further represent that in order to save an expense to the government, three commissioners be appointed from citizens of this Territory to act on the part of the United States for the purpose of carrying into effect said treaty, and that said commissioners shall consist of persons familiar with Indian affairs.

Your Memorialists again entreat your prompt attention to the subject, confidently believing that the interests of the general government and the people of Montana will be greatly subserved by an early treaty with said Indians, and your memorialists will ever pray.

Be it resolved by the Council and House of Representatives of the Territory of Montana, That our Delegate in Congress be and is hereby requested to use all honorable means to bring this subject to the favorable consideration of Congress.

[Approved December 9, 1867.]

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled:

We, your memorialists, the Legislative Assembly of the Territory of Montana, respectfully represent to your honorable body that the Territory of Montana is situated at so great a distance from the United States Mint that it is exceedingly inconvenient as well as

HeinOnline -- 1867 269 1867

1868 4th Regular.pdf

expensive to have large amounts of the precious metals, which are daily taken from the rich mines within our Territory, coined; that in the transportation of the metals to the mint, individuals are often subject to serious losses on account of the difficulty experienced in transporting the bullion.

During the last four years this country has produced and thrown into the channels of commerce immense quantities of the precious metals, gradually increasing from year to year until there was produced in the year (1866), according to the most reliable statistics, gold bullion to the value of eighteen millions of dollars in coin, and it is confidently expected that the present year (1867) will show an increase over and above that of 1866, of at least fifty per cent.

In addition to this, which has been almost exclusively taken from placer mines, the product will be greatly increased for years to come by the development of our rich gold lodes, which are fast attracting the attention of capital.

The mines of silver ore are now rapidly coming into notice. The mills, in what is known as the Rattle Snake district, in Beaverhead county, which work an argentiferous galena, are turning out silver in large quantities. Silver mines are also being opened, and in some cases the ore is being worked, in the counties of Madison, Edgerton, Jefferson and other places, while in the Flint Creek district, Deer Lodge county, immense lodes of silver quartz, principally rich sulphurets, bid fair to eclipse the rich silver mines of the State of Nevada. Besides the large amounts of precious metals, copper, lead and all the materials used in coining money are here in great abundance.

Your memorialists, therefore, believing that it would be greatly to the advantage of the people of Montana, as well as to the interest of the United States generally, most respectfully request that your honorable body will take such steps as will insure the establishment of a branch mint in the Territory of Montana at an early day.

[Approved December 13. 1867.]

MEMORIAL to Congress asking for the establishing of Post Routes and Post Offices in Montana Territory.

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled, and the Postmaster General of the United States.

We, your memorialists, the Legislative Assembly of the Territory of Montana, do respectfully represent to your honorable body, that the people of this Territory pay their national taxes for the purpose

HeinOnline -- 1867 270 1867

of supporting the government of the United States, as punctually as other portions of the government; and

Whereas, there is a great want of postal facilities in said Territory, Gallatin county, one of the most fertile counties in said Territory, with a voting population of near one thousand, having no post office in it, the citizens thereof having to depend entirely upon private express for their letters and papers at exhorbitant charges, costing annually thousands of dollars to the inhabitants of said county, we therefore would earnestly appeal to Congress to establish a mail route from Virginia City via Sterling, Gallatin City, Morse's store, Foster's bridge to Bozeman City; from Gallatin City via of Crow Creek and Springville in Jefferson county, to Helena, in Edgerton county. The mail to be carried on horseback once a week, and to establish post offices at the following places: Sterling, Madison county; Gallatin City, Morse's Store, Foster's bridge and Bozeman City, Gallatin county; Crow Creek and Springville, Jefferson county; and your memorialists will as in duty bound ever feel grateful.

[Approved December 13, 1867.]

Memorial praying for an appropriation by the Congress of the United States to remove the obstructions to navigation in the upper Missouri river, between the mouth of Milk river and Fort Benton, in the Territory of Montana.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled.

Your memorialists, the Legislative Assembly of the Territory of Montana, would most earnestly represent, that the interests of this Territory would be greatly promoted, and its settlement facilitated by the removal of obstructions in the upper Missouri river, between the mouth of Milk river and Fort Benton, (being a distance of about four hundred and fifty miles.) That said obstructions consist chiefly of large boulders, over which large steamers cannot pass except in an extraordinary stage of high water.

Your memorialists would further state that out of forty-eight steamers freighted at St. Louis, Missouri, during the last season for the port of Fort Benton, with an average cargo of one hundred and seventy-five tons of merchandise each, and the estimated value of each

1868 4th Regular.pdf

cargo being two hundred and fifty thousand dollars, thirteen of said steamers did not reach Fort Benton because of the obstructions in said part of the Missouri river; therefore,

Your memorialists would respectfully ask that an appropriation of five hundred thousand dollars be made by your honorable body for the purpose of removing said obstructions and making said river navigable for all classes of steamers; and would humbly urge upon your honorable body immediate action upon the subject set forth in this memorial as a measure of great importance to the people of this Territory, as in duty bound will ever pray.

Be it resolved by the Council and House of Representatives of the Territory of Montana, That our Delegate in Congress be and is hereby requested to use all honorable means to bring this subject to the favorable consideration of Congress.

[Approved December 23, 1867.]

JOINT MEMORIAL for an appropriation to remove obstructions to navigation in the Missouri River above the American Falls.

To the Honorable the Senate and House of Representatives in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Montana, would most respectfully represent, That above the Falls of the Missouri for a distance of two hundred and fifty miles, the river can be made a good navigable stream with a small outlay of money in the removal of obstructions.

In the opinion of your memorialists, an appropriation of one hundred and fifty thousand dollars expended under the supervision of some person or persons resident and interested in the welfare of the Territory, would be ample for the above purpose.

For the appropriation named in this memorial to open this so much needed great highway into the very heart of the rich mineral regions of our young Territory, we, your memorialists, will, as in duty bound ever pray, &c.

[Approved December 24, 1867.]

HeinOnline -- 1867 272 1867

Resolved by the Legislative Assembly of the Territory of Montana:

That the proposed surrender of a portion of eastern Montana for a permanent Indian reservation would be most prejudicial to the interests of the great west, and a staggering blow to the progress of civilization; that the fruitful valleys, rich mines and genial climate of the proposed reservation, while of vast importance to an industrial people, would be valueless to the barbarian excepting in so far as it would enable him to glut his vengeance upon the pioneers of the border settlements, and arrest the tide of empire in the Territories; we, therefore, earnestly appeal to the government to commit no such wrong against humanity, justice and the advancement of civilization.

Resolved, That we respectfully appeal to Congress to transfer the Indian Bureau to the war department, and abolish the whole system of Indian agencies which has been so fruitful of wrong to the Indians and of war upon the whites.

Resolved, That we respectfully represent to the general government that so far the military campaigns against the Indians by large bodies of regular troops upon the plains during the recent war with the hostile tribes have not been productive of benefits commensurate with the expenditures, and they have but too often resulted in unimportant military results, and closed in the fall by treaties not intended to be observed by the Indians, and by furnishing the savages with a supply of arms and ammunition with which, organized by the general government, to punish the guilty and bring them to submission by the only possible way past experience has proven to be successful—vigorous and victorious warfare.

Resolved, That certified copies of these resolutions be furnished by the Secretary of this Territory to our Delegate in Congress, to the Senate of the United States, to the House of Representatives of the Congress of the United States and to the War Department.

[Approved December 24, 1867.]

Authorizing the Auditor to pay for Arsenal and Magazine.

Whereas, The government of the United States has furnished to this Territory a large number of fire arms, some artillery, and a large quantity of ammunition suitable for the same, which has been placed

HeinOnline -- 1867 273 1867

1868 4th Regular.pdf

by proper authority in the custody of Green Clay Smith, Governor of this Territory, for the use and benefit of this Territory; and

WHEREAS, His Excellency Governor Green Clay Smith, in order to properly care for said property, and preserve the same, has contracted in the name of the Territory for the erection of a suitable arsenal and magazine combined, at an expense of five thousand five hundred dollars in Territorial warrants, and which said buildings are now about completed; therefore, be it

Resolved by the Legislative Assembly of the Territory of Montana. That the auditor of this Territory be, and he is hereby, authorized to audit a sum not to exceed five thousand five hundred dollars, and he shall issue his warrant for the same to Governor Green Clay Smith, which shall be used to liquidate the contract made for the building of said arsenal and magazine combined for the use and benefit of this Territory.

[Approved November 27, 1867.]

Be it Resolved by the Legislative Assembly of the Territory of Montana.

That the Secretary of the Territory of Montana be, and is hereby, required to furnish to the members of the Council and House of Representatives of said Assembly, and the chief clerk of each House, two copies of all the laws passed at the fourth session of said Assembly, and two copies each of the journals of each House of said Assembly; also, each assistant clerk, engrossing and enrolling clerk, sergeant-at-arms, doorkeeper, and fireman, of said Assembly with one copy each of all the laws and the journals of both houses, and each county and Territorial officer one copy each.

[Approved Dec. 13, 1867.]

Authorizing the Secretary of the Territory to make corrections, &c.

Resolved by the Council, the House of Representatives concurring:

That in comparing and arranging the copies of the laws for publication, the Secretary of the Territory shall be and is hereby au-

HeinOnline -- 1867 274 1867

1868 4th Regular.pdf

thorized to make such corrections in the orthograph and punctuation of the said copies, as he shall deem necessary to complete the sense of the laws; provided, that when words and clauses are inserted, such change shall be denoted by enclosing said words and clauses in brackets.

[Approved Dec. 13, 1867.]

Resolved by the House of Representatives, the Council concurring:

That the Auditor of Montana Territory be and is hereby empowered and required to audit and allow A. G. Prosser fifteen dollars for services as fireman at the fourth session of the Legislative Assembly of this Territory, before organization of the same, to be paid by the Territorial Treasurer out of any funds not otherwise appropriated.

[Approved Dec. 24, 1867.]

Resolved by the House of Representatives, the Council concurring:

That the auditor of Montana Territory be, and is hereby authorized and required to audit a sum not to exceed six hundred dollars, out of any funds in the Territorial treasury not otherwise appropriated, to J. J. Roe & Co., in payment of freight and express charges for books and library belonging to this Territory, shipped from St. Louis, Missouri, to Virginia City, Montana.

[Approved Dec. 9, 1867.]

Resolved by the House of Representatives, the Council concurring:

That the sum of fifteen dollars be and is hereby appropriated to Wm. Deascy as door keeper pro tem. of the House on the fourth and fifth days of November, 1867, and the Auditor is hereby authorized to draw his warrants on the Territorial Treasurer for that amount.

[Approved Dec. 13, 1867.]

HeinOnline -- 1867 275 1867

 1868 4th Regular.pdf

Resolved by the House of Representatives, the Council concurring:

That there is hereby appropriated to H. J. Johnston the sum of fifteen dollars for saw dust furnished to the 2nd session of the Legislative Assembly, and that the Auditor is hereby authorized to draw his warrant on the Territorial Treasurer for that amount of any monies not otherwise appropriated.

[Approved Dec. 21, 1867.]

Resolved by the Council, the House concurring:

That there shall be appropriated out of the treasury of this Territory the sum of three hundred dollars to James B. Powell for services rendered in keeping the arms and ammunition in good order in this territory under the direction of the Governor, and the Auditor shall draw a warrant for said amount in favor of the said Powell on the treasury.

[Approved Dec. 24, 1867.]

Resolved by the Council of the Legislative Assembly of the Territory of Montana, the House concurring:

That fifty-three dollars and five cents is hereby appropriated to J. J. Roe and Company for freight on the journals of the first Legislative Assembly of the Territory of Montana from St. Louis, Mo., to Virginia City, M. T., and the Territorial Auditor is hereby authorized and instructed to draw his warrant on the territorial treasury for the sum above named in favor of John J. Roe and Company, to be paid out of any moneys not otherwise appropriated.

[Approved December 13, 1867.]

HeinOnline -- 1867 276 1867

1868 4th Regular.pdf

Authorizing the Auditor to draw certain warrants.

Resolved by the House of Representatives of the Legislature of Montana, the Council concurring:

That the auditor be, and is hereby, authorized to draw his warrants upon the Territorial treasurer in favor of the following named persons, attachees of the extra session of the Legislative Assembly of the Territory of Montana, begun and held February 5th, 1867, to-wit: One hundred and twenty dollars each, as follows: Wm. Y. Lovell, C. C. Menaugh, and F. A. Shields, of the Council, and A. H. Barrett, E. S. Calhoun, and Robert Hedge, of the House of Representatives; also, O. P. Thomas, sergeant-at-arms of the House, Wm. Deascy, doorkeeper of the House, and J. B. Caven, sergeant-at-arms of the Council, and S. Chamberlain, fireman of the Council, the sum of one hundred dollars each; also, the sum of one hundred and twenty dollars to Jno. P. Bruce for publishing five hundred copies of the Governor's message, said amounts are hereby appropriated out of any money in the treasury not otherwise appropriated.

[Approved December 18, 1867.]

Resolved by the Council, the House of Representatives concurring:

That the Auditor of Montana Territory be, and he is hereby empowered and required, to audit and allow S. W. Hurst, Charles H. Gage and L. C. Lee the sum of one hundred dollars each for services in making the arrest of George Wesnor, alias J. D. Judd, alias Esnor, an escaped convict from the jail of Deer Lodge county, in the month of October A. D. 1867, said arrest made on the 17th day of December, A. D. 1867, to be paid by the Territorial Treasurer out of any funds in the territorial treasury not otherwise appropriated.

[Approved December 24, 1867.]

HeinOnline -- 1867 277 1867

1868 4th Regular.pdf

Resolved by the House, the Council concurring:

That the sum of twelve dollars be, and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to each of the following named persons: Klein S. Johnston, J. Finna, W. Baty, J. W. Brown, D. Hopkins, F. A. Shields, J. G. Ray, J. McLean, Wm. Butts, and P. A. Baker, and C. B. Robinson, for services rendered the Territory as clerks of this Legislature, and that the auditor of this Territory, and is hereby authorized to issue his warrants upon the treasurer for the amounts herein specified and in favor of the individuals herein mentioned.

[Approved December 24, 1867.]

HeinOnline -- 1867 278 1867

1868 4th Regular.pdf

INDEX

AGRICULTURAL.
Act to promote resources, 256
Who shall compose, 256
Be a body politic and corporate, 257
Corporators shall elect board, 257
Shall consist of seven members, 257
When to meet and elect officers. 257
Treasurer to give bonds to approval of president, 257
Duties of officers, 257
Board to direct annual exhibitions, of what, 257
Shall pay license of one hundred dollars, 257
May charge gate entrance, for what, 257
May pass by-laws, 258
AUDITOR AND TREASURER OF TERRITORY.
Act defining duties of territorial Auditor and treasurer, 55
Auditor. No warrants issued without express authority, 55
Shall specify name, service, amount and number, 55
Auditor to keep record of warrants issued, 55
Not to issue warrants unless authorized, and penalty, 92
To report same to each session of Legislature, 55
To furnish collectors with signed blank receipts, 55
And take collector's receipt of counties for same, 55
To direct prosecution against collectors and others, how, 55
Audit all claims against treasury, 55
Settle recognized claims, unappropriated for, how, 55
Be custodian of certain territorial property and what, 55
Furnish governor with information when required, 56
Suggest to him plans for improvement of revenue, 56
When and what to report to Legislature, 56
What other duties required of auditor and treasurer, 56
Penalty incurred by officers who refuse to account to them, 56
Penalty of refusing settlement or statement, 56
Auditor's office open at all times to governor's inspection, 57
Auditor's office, where kept and how furnished, 57
Shall make quarterly report of expenses thereof, 57
Salary and how paid, and additional fees, 57
Shall have access to treasurer's and other offices, 58
Authorized to administer oaths, 58
To compel attendance of witnesses, 58
Bond in what amount and power to increase the same, 58
Treasurer. Treasurer to enter and pay warrants, how, 57
Shall keep account of receipts and disbursements, 57
Render quarterly accounts or oftener to auditor, 57
Shall report to legislature, when and what, 57
Shall publish list of certain unpaid warrants, how, 57
Interest to cease thereon from such publication, 57
Treasurer to retain money to pay same, 57
Office, where kept and how furnished, 58
Open to governor, legislature and committees thereof, 58
Shall make quarterly report of expenses to auditor, 58
Shall receipt for moneys paid to treasury, how, 58
Salary, how payable and additional fees, 58
Shall have access to auditor's and other offices, 58
Authorized to administer oaths, 58
To compel attendance of witnesses, 58
Bond, in what amount and power to increase same, 58
Act providing for purchase of safe, 241
CIVIL CASES.
Act to regulate proceedings therein, 68
Change of venue in certain cases, 68
[This act repealed by adoption of entire Civil Code after its passage.]
CLERKS OF DISTRICT COURTS.
Act requiring them to give bonds, 79
Bond to Territory in sum of $5,000, 79
To be approved by judges, how conditioned, 79
How bonds sued upon and where, 79
Duty of judges in appointment of clerks, 79
Clerk to procure seal, how paid for 80
Where office and books to be kept, 80

HeinOnline -- 1867 1 1867

COMMON SCHOOL SYSTEM.
Act to amend same, 66
Commissioners to levy tax of three mills, 66
Auditors to report to superintendent, when and what, 67
County clerk ex officio auditor, 67
Penalty of failure to report, 67
Superintendent to make statements, when, 67
To apportion school fund, when and how, 67
County treasurers to report to superintendent, when and how, 67
Shall pay monies to superintendent, 67
County superintendents report to territorial superintendent, 67
All conflicting laws repealed, 67
School Trustees. Use school moneys, for what purpose, 67
COMPENSATION OF OFFICERS.
Amended act providing therefor, 97
Governor allowed $2,500 under certain restrictions, 98
Territorial auditor to issue warrants therefor, 98
Section three of original act repealed, 98
Territorial salary of justices of supreme court repealed, 98
CORPORATIONS.
Act to provide for corporations for manufacturing, mining, mechanical or chemical business, 25
Persons desirous of forming to make and sign certificate of what effect, 25
Certificate to be filed in office of clerk of county and Secretary of Territory, 25
Secretary to record and preserve same in his office, 25
Copy of same, duly certified, evidence of existence of company, 25
When filed, persons signing shall be known as corporate body with what powers, 26
Certificate may designate one or more places of business in Territory, 26
Shall state place of business outside of Territory, 26
Stock, property and concerns managed by trustees, 26
Public notice of election of trustees given, how, 26
Election by ballot, each share entitled to one vote, 26
Vacancies provided for by the laws of the company, 26
Failure to elect trustees on day designated, provided for in by-laws, 26
Powers of trustees, 27
Officers required to give security, 27
Subscription called in, how, and penalty for non-compliance, 27
Trustees have power to make by-laws, 27
Stock deemed personal estate, and how transferable, 27
Certified copy of certificate prima facie evidence of what, 27
Stockholders individually liable, and to what extent, 27
Capital stock to be paid in two equal annual payments or company dissolved, 27
Trustees may purchase property for business purposes, and issue of stock in payment, 27
Stock so taken not liable to further call, 28
Said stock to be reported according to facts, 28
President and trustees to make and record certificate of stock paid in, when, 28
Annual report to be published, when, how, and what to contain, 28
Shall be verified by oath of officer and filed in county clerk's office, 28
Trustees liable for all debts, until report is made, 28
Trustees liable if they pay dividends while company is insolvent, 28
Same if they pay dividends which would render it insolvent, 28
Exempt from such liability by filing with clerk certificate of objection, 28
No loan allowed by company to stockholders and penalty, 28
Officers signing false report liable for all debts of company, 28
Executors, administrators, guardians and trustees holding stock not personally liable, 29
Nor persons holding stock as collateral security, 29
Such persons liable only as stockholders, 29
To same extent as the interests they represent, 29
Executors, administrators, guardians and trustees may vote as stockholders, 29
Pledgors of stock may vote as stockholders, 29
Alteration, amendment or repeal not to affect liabilities previously incurred, 29
Terms upon which corporations heretofore formed may increase or diminish capital stock, 29
Same as corporations under this act, 29
Debts thereof to be reduced to correspond with the diminished capital, 29
Existing corporations may organize under this act, and how, 29
Trustees to publish notice for increasing or diminishing stock, and how, 29
Same for extension or change of business, 30
Representation of two thirds of shares of stock necessary, 30
Certificate of doings, as required by first session hereof, to be filed, 30
Assenting trustees personally liable for excess of indebtedness, 30

CORPORATIONS.
Trustees to keep book for inspection of members, with names of stockholders, 30
Said book presumptive evidence against stockholders, 31
Penalty for improper entries or refusal to exhibit said book, 31
Penalties thus incurred appropriated to common school fund, 31
Treasurer to furnish statement in full, on demand of persons owning fifteen per cent of stock, 31
Said statement to be delivered in twenty days after presentation, 31
Copy thereof to be kept for inspection of stockholders six months, 31
Treasurer to forfeit fifty dollars for negligence or refusal, 31
Certificate for wagon road shall state termini and route thereof, 31
Persons associated therefor shall have right of way, &c., 31
Rates of toll prescribed by county commissioners, 31
To be written, printed, painted and posted at gates, 32
No road, ferry or bridge established without consent of county commissioners, 32
County commissioners have power to increase or decrease toll, 32
Company not to demand toll unless in good repair, 32
Justice to fine on complaint, if bad or unsafe, 32
Justice to order no toll, until road in good repair, 32
Persons refusing, after demand, to pay toll, subject to fine, 32
What persons associating to form ditch companies required to state, 32
Provisions under which ditch companies have the rights to streams, 32
Ditch companies to furnish water in manner designated in certificate, 32
To give preference to persons named in certificate, 33
Rates of water fixed by county commissioners, 33
Ditch companies to keep banks in order and not infringe on others, 33
Requirements of companies formed for constructing flumes, 33
Requirements and rights of companies formed for bridges and ferries, 33
Bridges and ferries to be kept in safe condition, 33
If destroyed, to be rebuilt in nine months, or right forfeited, 33
Toll to be posted at bridge or ferry and prescribed by county commissioners, 34
Company receiving excess of toll to be fined, 34
Justice to fine on complaint, if bad or unsafe, 34
And to proceed further as directed in section 29, 34
No rights to roads, bridges or ferries, except by compliance with this act, 34
Requirements of persons associated to make tunnel for mining, 34
Requirements of tunnel companies, 34
Requirements of telegraph companies, 34
Ditch, flume, bridge, ferry and telegraph companies to commence work in sixty days, 34
Time given for completion, two years or forfeiture, 35
County commissioners may, for public use, purchase roads, bridges and ferries, 35
Powers of corporations enumerated, 35
No corporation to own or possess more than 640 acres of land, 35
Nor to exercise any extra corporate powers, 35
Punishment by fine and imprisonment, for malicious damage to corporation property, 35
Fines paid to county treasurer for common school, 35
Offenders to pay damages and costs, 35
Issue of notes or bills for money prohibited, 35
Companies forming under this act to surrender previous rights by notice to secretary, 36
Petition to probate judge for appraisal of land, not owned but required by company, 36
Notice to be given to owners and persons interested in such land, 36
Probate court to appoint three appraisers, 36
Appraisers to take oaths, hold and adjourn meetings, swear and examine witnesses, &c., 37
They shall ascertain and certify all damages and benefits, 37
Shall file ascertainment with clerk of county, 37
Probate judge, on proof such compensation has been made, shall enter claims on minutes, 37
Same to be recorded in recorder's office, 37
Company to be seized or possessed of property, upon the entry of rule, 37
Of title, defective, how remedied, 37
Appraisers to be paid five dollars per day, 38
If appraiser dies, another appointed on notice, 38
Jurisdiction of district same as probate court, 38
District court power to dissolve corporation and how, 38
Trustees of corporation have power to settle its affairs after dissolution, 38
Corporation may remove place of business and how, 39
COUNCIL AND REPRESENTATIVE DISTRICTS.
Act defining and apportioning members, 87
Legislative Assembly to convene, when, 87

1868 4th Regular.pdf

COUNCIL AND REPRESENTATIVE DISTRICTS.
Thirteen members of Council and twenty-four of House, 87
Territory divided into Council and Representative districts, how many, 87
Six members of Council elected for 1868, 87
Members for 1869, how many, 87
Vacancies, resignations, how filled, 87
Majority elects, 88
Act fixing time of meeting thereof, 90
COUNTY BUILDINGS.
Act providing for Madison and Jefferson counties, 85
Commissioners to contract for, how and when, 85
Amount of tax to be levied, 86
COUNTY CLERKS.
Act authorizing appointment of deputies, 90
Right and duties thereof, 91
COUNTY CLERKS.
Deputies to preserve and transmit filings of quartz, 91
County clerks responsible for acts thereof, 91
COUNTIES AND COUNTY BOUNDARIES.
Act relating thereto, 99, 100, 101, 102, 103, 104, 105
Curative provisions relating to Meagher county, 99
Act to establish county seat of Gallatin county, 100
To authorize levy of tax for certain purposes in Deer Lodge county, 103
Citizens of Jefferson county to change county seat, 105
Commissioners of Missoula county to levy tax for certain purposes, 106
Amendatory act to define boundaries of Deer Lodge and other Counties, 129
Changing name of Edgerton to Lewis and Clark County, 130
To define lines of Choteau County, and locate county seat, 129
To locate county seat of Missoula county, 107
COUNTY TREASURERS.
Act defining duties of, 59
Taxes and licenses to be paid in money, 59
By whom and how paid in warrants, 59
Warrants, how entered and paid, 59
Monthly list of warrants to be posted, 59
Interest to cease after being posted, 59
Copy of notice to be filed with county clerk, 59
To be prima facie evidence of posting, 59
To pay all monies to territorial treasurer, when, 59
Take duplicate receipts therefor, how dispose of them, 59
Fees of county treasurers, 60
What part of revenue act hereby repealed, 60
CRIMES AND PUNISHMENTS.
Acts to amend same, 74 75 248
Use of deadly weapons, how punished, 75
Fines for benefit of common schools, 75
Officers in discharge of duty, not liable, 75
Military and civil officers to give information, 75
Duty of judges to give act in charge to grand juries, 76
Assaults defined, 76
How punished, 76
What offences punishable with imprisonment, how long, 76
Assault and battery defined, 76
How punished, 76
For injuries to bridges, dams, flumes, etc., 75
CRIMINALS.
Act requiring them to perform labor, 95
Compelled to labor during sentence, 95
County commissioners to employ said criminals, 95
Labor done under superintendence of sheriff and subordinates, 95
Benefits and profits to accrue to county, 95
City authorities, to employ for violation of ordinances, 95
Profits of labor to accrue to cities, 95
Incorporated towns to have full benefit of act, 96
Authorized to secure with chains, to prevent escape, 96
Unruly prisoners, how confined and fed, 96
DEBT OF MONTANA.
An act to provide for the funding of the debt of Montana Territory, 53
Territorial treasurer to issue bonds, when and how, 53
Not to exceed sixty thousand dollars, 53
How redeemable, payable, interest and of what denominations, 53
Warrants to be presented to Territorial auditor by holders, 53
Auditor to give certificate of amounts, etc., 53
Treasurer to issue bonds therefor, 53
Governor to direct form of bond, 53
Bond to be signed by auditor and treasurer, 53
And sealed and countersigned by secretary, 53
Bonds registered by treasurer, 53
Auditor to report certified amounts to Legislature, 53
Faith of Territory pledged, 53
Penalty for passing, counterfeiting, publishing, etc., 54
Appropriations to carry act into effect, 54

HeinOnline -- 1867 4 1867

DEBT OF MONTANA.
Interest to be paid semi-annually, 54
Payable on condition in New York City, 54
Treasurer to reserve fund to pay interest, 54
Surplus thereof, sinking fund to reduce principal, 54
When treasurer to redeem, how, 54
DEBT OF COUNTIES.
Act to authorize commissioners to fund same, 234
May call in orders and issue bonds, with interest, semi-annually, 234
Interest to be fifteen per cent per annum, 234
May set apart revenue for payment of bonds and interest, 234
Bonds not to be less than fifty dollars, 234
County treasurer to keep record of same and make report when and how, 234
Bonds redeemable at pleasure, after three years, 234
Bonds payable within seven years, 234
DESCENTS AND DISTRIBUTIONS.
Act regulating same, 3
Estates subject to debts of intestate and dower, 64
Course of descents, 64
Posthemous descendants to inherit, 64
No right of inheritance, unless in being at death of intestate, 64
How regulated if there be no descendants, 64
How in case of descendants of whole and half blood, 64
To take per capita, and per stripes, how, 64
How in case of life time and advancements, 64
What not an advancement, 64
Demandant not barred by alienage of ancestor, 65
Bastards inherit in right of mother, 65
Children legitimatized by intermarriage, 65
Children of null marriages and divorces legitimate, 65
DEPUTY DISTRICT ATTORNEYS.
Act in relation to appointment of, 242
District attorneys authorized to appoint deputies, 242
Except in counties of Meagher, Deer Lodge and Missoula, 242
Their duties and fees, 242
ELECTIONS.
Amended acts relating thereto, 76 96 256
Explanatory of act of Nov. 22, 1867, 77
Who may be voters, 96
Duty of county commissioners, 96
Punishment of judges and clerks for false returns, 97
FOREIGN CORPORATIONS.
Act concerning, 65
Shall file verified charter or certificate with secretary and recorder, 65
What verification to contain, 65
Shall pay for recording same, 66
Penalty of neglect for refusal to record certificate, 66
FENCES
Act declaring what lawful fence, 92
FIRES.
Act relating to protection of timber and grasses, 91
Penalty of setting fire to same, 91
GOLD AND SILVER QUARTZ LODES.
Act relating to, 71
Lodes to be recorded in fifteen days, 71
Oath to be taken, to what effect, 71
Specimen deposited in recorder's office, 71
Recorder to label and preserve it, 71
Oaths heretofore made valid, 71
Act to legalize location of same, 247
Act repealing part of section five of original act, 249
Except as to existing contested rights, 71
HELENA.
Act to incorporate city of, 249
Boundaries of city, 250
Assignment of wards, 250
Officers of city, 250
Their powers in law, 250
Municipal powers, 250
Election of city officers, when, 250
How conducted, 250
Duty of clerks and judges of election, 250
Duty of common council after election, 251
When council meetings to be held, 251
Power of mayor to call special meetings, 251
Duties of common council, 251
Duties of board of aldermen, 251
Real estate may be sold for taxes, how, 252
All ordinances to be approved by mayor, 252
Further duties of mayor, 252
How tie votes decided, 253
Officers to take oaths, 253

Oath of judges and clerks of election, 253
Commissioners named to provide first election, 253
Their duties, 253
When returns to be canvassed, 253

INTOXICATING LIQUORS.
Ac to prevent sale of to Indians, 88
No person to sell, directly or indirectly, 88
What is meant by intoxicating liquors, 88
Punishment of offenders, 88
Civil officers of cities to arrest and complain, 88
If grand jury not in session, then before justice, 88
Duty of justice, upon complaint, 88
Judge to give act in charge to grand jury, 89
Duty of district and prosecuting attorneys, 89

JURORS
Petit Jurors. Act concerning, 69
County commissioners to select, and how, 69
List to be furnished clerk of court, 69
Summoned five days before term, 69
Sheriff to return venire, when, 69
Same subject to inspection of officers and attorneys, 70
Box containing residue of names, how disposed of, 70
Clerk to draw therefrom for other jurors, how, 70
Court dispense with summoning distant jurors, 70
May order others in their places, 70
Clerk to issue venire therefor, 70
Sheriff to summon same, 70
Grand Jurors. Commissioners to select grand jury, how, 70
Clerk to issue and sheriff serve venire, how, 70
When others wanted, how to proceed, 70
Who may serve as jurors, 70
Who are exempted from service, 70
Penalty of disobedience to venire, 70

LICENSES.
Act concerning, 235
Different subjects of licenses and amounts for each, 235
How private associations and incorporations to be taxed, 235
Bankers and dealers in bills of exchange, how, 236
Dealers in Merchandise, 236
Keepers of restaurants, hotels, etc., 237
Traveling merchants and pedlars, 237
Persons procuring cattle, etc., to be brought into this Territory, 237
Brewers and manufacturers of liquors, 327
Games of chance, etc., 237
Butchers, how taxed, 237
Keepers of picture galleries, etc., 238
Roads, bridges, ferries, etc., 238
President of companies to file sworn statement, how, 239
Penalty for false report, 239
Tax collector to require sworn statement, 239
Laundries conducted by males to pay tax, 240
Penalty for doing business without license, 240
Persons discharging goods from steamers, etc., how taxed, 240
Licenses granted for one year or less, 240
Criminal action, party charged to produce license, 240
Duty of treasurer to collect license, 240
Licenses due to be collected under previous laws, 241

LIENS BY ATTACHMENT AND JUDGMENT.
Attachment. Act relating to same, 83
Liens accrue at time property attached, 34
In the order in which levied, 84
Not affected by subsequent attachment or judgment, 84
Writs served at same time to share pro rata, 84
First writ levied to be first satisfied, 84
First writ in officers hands to be first levied, 84
Judgments. To become lien from date of rendition, 84
Continue two years until lien expires, 84
Justices transcripts to be filed with recorder, 84
To be lien therefrom, with exceptions, what, 84
How long lien to continue, 84

LIMITATIONS.
Act repealing certain sections of act concerning same, 89

LORD'S DAY.
Act for the better observance, 73
What is prohibited, 74
Punishment for violating, 74
Fines for benefit of common schools, 74

MARKS AND SIGNATURES.
Act to provide for marks, 79
Signature valid if person cannot write, 79
To make mark, same to be witnessed, how, 79

INDEX

MECHANIC'S LIEN.
Act amending act securing same, 80
What persons entitled to lien, 80
Lien to be filed within sixty days, 80
Same to be filed with recorder, 80
NOTARIES PUBLIC.
Supplementary act in relation thereto, 77
To record, commission and file bond with recorder, 77
Commissions forfeited, how and when, 77
Number of sureties, to be sworn and approved, how, 77
Rights of persons damaged by notaries, 77
PENITENTIARY.
Act locating same, 93
Located at Deer Lodge City, 93
Governor to inform Secretary of Interior, when, 93
Act to provide for government of same, 242
Board of prison commissioners created, 242
Duties of, 243
Office of warden created, 243
Duties of warden, 243
Board may advertise for supplies, 243
May furnish occupation for prisoners, 243
Extent of prison, 243
The warden to be executive officer, 244
Warden to receive criminals, 244
How warden appointed in case of vacancy, 244
Warden to execute bond, etc., 244
Salary of warden, two thousand dollars 245
Salaries of other employes, how regulated, 245
Commissioners may appoint secretary, his compensation, 245
PLACER MINES.
Act relating to discovery and possessory rights thereof, 81
How and what discoverers entitled to, 81
Extent of gulch claims, 81
Of bank, bar and hill claims, 81
Gulch with banks, bars and hill sides, one district, 81
Claims, how represented, 81
How determined, when work impracticable, 81
Recorder for each district, duties and fees, 81
Staking, how and when, 81
Persons may hold claims by purchase, 82
Work upon one claim, representation for all, owned by one person, 82
Miners may make local laws, how, 82
Said laws not to conflict with vested rights, 82
PROBATE COURTS.
Jurisdiction, five hundred dollars in civil cases, 258
Misdemeanors, where fine does not exceed $500, or imprisonment one year, 259
No terms in probate court, 259
Jurisdiction co-extensive with county, 259
Time of service of summons, 259
When to be held at Philipsburg, 248
PRIVATE AND SPECIAL LAWS.
Act to authorize Loutesenhizer and others to keep ferry on Trout Creek, 108
To authorize Tingley and others to construct wagon road, 109
To incorporate Gold Hill mining and tunneling company, 110
To authorize Holmes and others to establish ferry, 111
To authorize Guyot and others to maintain wagon road, 112
To authorize Bresler, Hedge and others to maintain toll road, 113
To authorize Gassett and Sinclair to maintain ferry, 114
To authorize Whalley, Stafford and others to establish toll road, 115
To re-enact an act to incorporate Black Tail Deer and Helena wagon road, 116
To re-enact an act to incorporate Madison bridge company, 117
Amendatory act to incorporate the city of Nevada, 118
To re-enact an act authorizing Weir and others to maintain bridge or ferry, 119
To authorize Bailey and heirs to maintain toll bridge, 120
To provide compensation to John P. Bruce, 121
Amendatory act to incorporate Virginia City, 121
Appropriation to pay Lovelock and Roberts, 123
Authorizing issue of warrants to John H. Rogers, 124
To provide compensation for John Guy, 124
To provide for compensation to Wilkinson and Ronan, 125
To authorize Gilmore and Lowry to construct ferry, 125
To re-enact act to incorporate El Dorado and Diamond City wagon road, 127
To re-enact act authorizing Ray W. Andrews to establish ferry, 128
To divorce Henry B. from Rowena Steele, 130
To divorce Mary E. from Amos Launier, 131
To divorce John W. from Louisa M. Winslett, 132
To divorce Rosa V. from Abram Van Vlerden, 132
To divorce George W. from Mary Jane Hacker, 132

PRIVATE AND SPECIAL LAWS.
To divorce Edward from Margaret McBroom, 132
To divorce G. Jules from Marie Germain, 133
REVENUE.
Act providing for collection of revenue, 39
County commissioners to levy annual advalorem tax, 39
County treasurers to collect same, 39
Tax to be lien on property assessed from time of assessment, 39
What property exempt from taxation, 39
Taxable property embraces what, 40
Every inhabitant of full age to list property, 41
Property of minors listed by guardian or parents, 41
Of married women by husband or herself, 41
REVENUE.
Of beneficiaries and descendants, by whom, 41
Property under mortgage or lease, how listed and taxed, 41
Commission merchants and consignees of non-residents deemed owners, 41
Personal property listed in county where owner resides, 41
Of non-resident owners, where it may be, 41
Duty of persons required to list for others, 41
Property of corporations, how assessed, 41
How property of non-resident stockholders to be taxed, 42
Secretary or officer to furnish names of, and stock owned, by non-resident stockholders, 42
In case of refusal, how such information obtained, 42
Taxable property to be listed and valued each year, 42
To be assessed at its value in money, 42
Depreciated paper, stock and credits taxed at current value, 42
Annuities at such sum as person listing thinks them worth, 42
Definition of credits, 42
Who shall be deemed merchants, 42
How the value of taxable property to be ascertained, 42
Who shall be deemed manufacturers, 42
Property of manufacturers, how estimated, 42
Assessor to demand of each taxpayer, sworn list, and when, 42
How he must proceed if list not furnished on demand, 43
To make assessment, if list not returned, 43
To seize personal property, if owner's real property is insufficient, 43
Treasurer to sell same if taxes not paid in ten days, 43
And to seize and sell other taxable property, 43
Property arriving in territory between 1st of January and 31st of December to be listed on demand, 43
What property list to contain, 43
County commissioners to furnish form and instructions, 43
List, how signed, sworn and oath thereto, by whom administered, 44
Assessor to give county clerk assessment roll, when and what to contain, 41
To make oath thereto, and the form, 44
Additional fees of assessor, 44
Assessor to demand sworn statement of corporation officers, and form thereof, 44
To receive twelve dollars per day while actually employed, 45
Commissioners to set apart that amount, how, 45
Penalty for refusing to make sworn statement, 45
Net proceeds of mining stock, companies, etc., taxed in county where mine located, 45
List to be furnished treasurer, and when, 45
Treasurer to furnish receipts for clerk, territorial auditor and treasurer, and what to contain, 45
County treasurer charged with amount assessed, 46
Credited with payment of colllections and other amounts, 46
Diligence of treasurer to be proved, 46
County commissioners to correct assessment roll, when and how, 46
Shall levy taxes first Monday of February, 46
County clerk to make tabular form thereof, how, 46
Shall attach warrant to treasurer under seal, 47
Deliver list to treasurer by 1st of July annually, 47
Shall transmit assessment roll to territorial auditor, when, 47
Assessment roll to be corrected, by whom, 47
No demand of taxes except as in section fifteen, necessary, 47
Tax to be collected by distress and sale, after 15th September, 47
What disposition treasurer is to make of distrained goods, 48
Treasurer to call posse if resisted, 48
Penalty of refusing to aid him and how recovered, 48
Unpaid taxes delinquent 1st of January annually, 48
Draw interest therefrom at 25 per cent, 48
Taxes upon real property, perpetual lien thereon and exceptions, 48
Delinquent lands to be sold 1st day of March, annually, 48
Sale not void if made after that date, 48
Conditions upon which taxes may be paid before sale by distress, 48
Notice of sale of delinquent lands published, how, 48
Ten per cent added to taxes due, when advertised, 48
Times and adjournments of sale, 48

HeinOnline -- 1867 8 1867

REVENUE.
Treasurer's return of sale, how made, when and how verified, 49
Highest bidder, who pays amount due, for smallest portion, 49
How portion sold to be determined, 49
Homestead liable only, for taxes due thereon, 49
Portion sold, divided so as to avoid homestead, 49
When homestead unascertained, how to proceed, 49
When bidder fails to pay, land to be again offered, 49
Or amount to be recovered by civil action, 49
Treasurer to give purchaser certificate of land sold, 49
Separate parcels to one purchaser, included in one certificate, 49
Treasurer's fee for certificate, 49
Certificate legally assignable by indorsement, 49
Property sold redeemable in one year, 50
Treasurer to issue certificate of redemption, 50
Fee for such certificate, 50
Billiard tables, bar fixtures and furniture liable, how, 50
Treasurer to make deed, and when, 50
May demand five dollars therefor, 50
Form of treasurer's deed, 50
Purchaser harmless for treasurer's mistake, how, 51
County treasurer to pay Territorial treasurer every three months, 51
To complete collections in six months, 52
Territorial treasurer's duties against county treasurer, 52
Right of tax payers against county treasurers, 51
County treasurers to be collectors of taxes, 52
Poor tax how levied and collected, 52
ROADS.
Act supplementary, for protection thereof, 82
Persons excavating shall bridge same, 82
Bridge to be accepted by county commissioners, 82
Penalty of violation and how recovered, 82
Act to establish road from Bozeman to Helena, 84
Act to prevent obstructions thereof, 89
Penalty for obstructing same, 90
SECRETARY OF TERRITORY.
Act providing additional compensation, 255
SUPERINTENDENT OF PUBLIC INSTRUCTION.
Duty to prescribe, what, 254
What shall be printed, 254
Shall see that county superintendents distribute moneys, 254
Duty of county to make report to territorial superintendent of what, 254
Where shall keep his office, 255
Shall give public notice thereof, how, 255
Salary, 255
How necessary expenditures paid, 255
STORAGE AND COMMISSION MERCHANTS.
Act providing for disposition of goods for storage, etc., by same, 78
Shall keep goods in store, how long, 78
Sell at auction by publication, how, 78
In case of agreement, how, 78
How to proceed, if no newspaper published in county, 78
No more to be sold than will pay charges, 78
All sales to vest title in purchaser, 78
Merchant to retain storage from amount, 78
To pay balance to owner, 78
TERRITORIAL AND COUNTY OFFICERS.
Act creating territorial officers, 72
What officers to be elected, 72
Delegate to Congress, how often elected, 72
Members of Council and House, how elected, 72
Treasurer, auditor and superintendent, how elected and commissioned, 72
To take oath and give bond, conditions, 83
Duration of their respective offices, 72
How bond to be increased, 83
How they are to be appointed under this act, 722
Duty of predecessors in office, 83
When they are first to be elected, 72
District attorneys, how elected, 72
How long present attorneys to hold office, 72
Resignations of territorial officers to Governor, 72
Of county officers to county commissioners, 72
How offices made vacant, 73
When Governor to declare offices vacant, 73
Governor to fill vacancies, when, 73
When to be filled by county commissioners, 73
All appointees to take oath and file bond, 73
Curative act, 86
TERRITORIAL PRISONERS.
Act to provide for the support and care of, 94
In custody of sheriff and charge upon territory, 94
Who are deemed territorial prisoners, 94

TERRITORIAL PRISONERS.
County commissioners to audit expense of keeping, how often, 94
Amount allowed sheriff, how certified and collected, 94
TOWN SITES.
Act relative to pre-emption of, 60
Town site to be entered by corporate authorities, how, 60
If town incorporated by probate judge, how, 60
Power of corporate authorities or probate judge, 61
Sites to be surveyed, and how, 61
Plat to conform to existing rights, 61
Accepted by county commissioners, 61
How site to be surveyed, size of lots, how recorded and dedicated, 61
Notice of entry, how and by whom given, 61
Duty of claimants in pursuance thereof, 61
TOWN SITES
Statement of claim, how made, verified and recorded, 61
Proof of statement within six months, not after, 61
Number of lots to which claimant entitled, 62
Probate judge or corporate authorities to award lots, how, 62
To make deed thereof, 62
Fees in uncontested cases, 62
How to proceed in contested cases, 62
Appeal to district court, when and how, 62
Deed suspended until appeal determined, 63
Fee at time of filing statement of claim, 63
With whom fee deposited, 63
How expenses of entry, survey and platting borne and paid, 63
TOLL.
Act to prevent the collection of illegal, 247
TREASURER. (See Auditor and Treasurer.)
WEIGHTS AND MEASURES.
Amended act concerning same, 93
County commissioners to adopt temporary standard, till when, 94
Act to remain in force till when, 94

1868 4th Regular.pdf

INDEX TO CIVIL PRACTICE ACT

A

ABATEMENT AND REVIVOR. See Action, 16
Action shall not abate by death or other disability, 16
Or by transfer of interest therein, etc., 16
Action may be continued by or against representatives, when, 16
In the name of the original party, when, 16
Transfers may be substituted, when, 16
Abatement of nuisance or waste, 249

ABSENCE.
Of defendant's attorney to appear, 31
Waives a jury, when, 179
Of evidence, when a trial will be postponed, 158

ABSENTEE.
Attorney may appear for appointment by the court, 31
Witness, deposition of, 403–406. See Non-Resident.

ACCIDENT.
Ground for new trial, when, 193

ACCOUNT.
Parties may prove accounts in certain cases, 423
Items need not be in pleading, 56
Copy of may be demanded, 56
A further account may be ordered, when, 56

ACTIONS CIVIL.
One form of, 1
Parties. See Parties, 2
Questions of fact not in issue may be tried in, 3
Order for trial, how made, 3
Shall be prosecuted by real party in interest, 4
By an assignee, 5
Between husband and wife, 7
Again husband and wife, wife may defend her own right, 8
By guardian for injury or death of his ward, 11
By father or mother for injury or death of a child, 11
When and when not to abate, 16
In case of death or other disability action may be continued, 16
Place of trial, 18, 21
To be tried where the subject matter is situated, 18
To be tried where the cause of action arose, 19
To be tried where parties reside, 20
Place of trial of, may be changed when, 21
How commenced, 22
Pendency of, when notice, 27
Against sureties on bail on arrest, 81
Against two or more defendants, 22, 346
For recovery of real property, 27, 58, 256
For partition of real property, 264, 309
To determine conflicting claims to real property, 254, 263
To quiet title to real property, 254
For nuisance, waste of trespass, 219, 253
To foreclose mortgage, 246, 248
For libel and slander, 62
For usurpation of office, 310
For damages against a non-attending witness, 388
For delivery of personal property, 99, 110
Upon a written instrument, 53
Against joint debtors, 346, 351
To obtain a discovery, cannot be maintained, 395

1868 4th Regular.pdf

ACTIONS CIVIL.
What causes may be united, 64
Successive may be brought, 496
May be consolidated, 497
To determine adverse claims or for money or property upon an alleged obligation, 497
To compel one to satisfy a debt due to another for which plaintiff is bound as security, 497
May be dismissed, 148, 485
Another action pending, demurrer to, 40
ADJOURNMENT.
May be while the jury are absent, 170
Final for the term discharges the jury, 170
ADMINISTRATOR.
May sue, 6
Security by, on appeal, 337
Must pay costs, when, 479
ADVERSE PARTY—2—319. See Parties.
AFFIDAVITS.
Of service of summons, 28, 33
For publication of summons, 31
For publication of summons in partition suit, 269
Verifying pleadings, 4, 113
When plaintiff is a non-resident, 5
When a corporation is a party, 55
When a territory is a party, 55
On motion to continue cause, 158
On motion for a new trial, 194, 195
On objections to appointment of a referee, 186
To show misconduct of a jury, 193
In proceedings against joint debtors, 346
On redemption of property, 234
Of property due to judgment debtor, 241
To compel judgment debtor to appear and answer concerning his property, 238, 239
To arrest judgment debtor, 239
Of sureties on bonds for costs, 484
Of sureties on appeal bonds, 339
For judgment by confession, 352
For submitting a controversy without action, 355
Showing notice of filing award of arbitrators, 363
Of concealment of materiality of witness, 383
Of witness to be exonerated from contempt, 394
For an order to examine witness imprisoned, 390, 391
For examination of witness by deposition, 404
To prove service of application, 414
To authorize deposition to be read in certain cases, 405
On application to perpetuate testimony, 413
To be prima facie evidence of facts, 416
On application for a writ of certiorari and mandamus, 432
In proceeding by quo warranto, 311
Of facts constituting contempt, 456
Of costs and disbursements in an action, 481
Arrest and bail, affidavit to obtain order of, 75
Of sureties to the undertaking on arrest, 76
Copy to be given to the defendant, 78
Of justification of bail, 89
To vacate order of arrest, 97
On attachment, 121
Injunction may be granted on affidavit, 113
Affidavit on bond to release, 136
To discharge attachment, 140
To complaint for injunction, 113
Affidavit shall be served with the injunction, 113
To dissolve injunction, 119
To oppose motion to dissolve injunction, 118
In replevin where delivery is claimed, 100
How served in replevin, 102
On bond in replevin, 102
On bond where return of property is demanded, 104
Of title, where property is claimed by third person, 109
To be filed by the sheriff, 110
For contempt, 456
Answer denying signature to a written instrument to be verified, 53
Affidavit by plaintiff denying written instrument, 54
When valid, though defective, 502
Before whom may be taken in the territory, 399
In a state of the United States, 400
In a foreign country to be used in this Territory, 41
Certificate of clerk to affidavit, 42
AGE. Affirmation, 420; see Oath.
Of infants when guardian shall be appointed, 10

HeinOnline -- 1867 12 1867

ALIENATION.
Of real property cannot prejudice an action to recover, 265
ALLEGATIONS.
Are formal in pleadings, 36
Denial of, in answer, 46
In complaint, not controverted by the answer, to be taken as true, 65
In answer, to be deemed controverted, 65
Irrelevant and redundant to be stricken out, 51
In complaint for injunction, 112
In pleadings against joint debtors, 350
Material allegations, what are, 66
Shall be liberally construed, 70
ALTERATION.
Of a writing produced as genuine, 423
AMBIGUITY.
In a complaint, 40
AMENDMENT.
To complaint, 43
How served or filed, 43
To a statement on motion for a new trial, 195
To a statement on appeal, 322
To be prepared and served in twenty days, 322
Amendments to be prepared and served in five days, 322
How served, 322
After demurrer filed, 67
To pleadings or proceedings generally, 68
By adding or striking of name of party, 68
By correcting mistake in name of party, 68
Or mistake in any other respect, 68
ANSWER.
Waives summons, 22
When defendant must file, 25
On whom served, 38
May be to part of a complaint, 42
May object to complaint, 42
May be joined to a demurrer, 42
To amended complaint, 43
May object to complaint, 44
Failure to file, what is deemed to admit, 45
To complaint, 46
May contain several defences and counter claims, 49
Defences must be separately stated, 49
When containing new matter, 50
When it may be stricken out, 50
To be, or not, verified, 51, 52
By whom, 51
To complaint on written instrument, 53
Copy of instrument in the answer, when to be deemed admissible, 54
By whom verified and form of affidavit, 55
Who need not verify, 55
Irrelevant or redundant matter to be stricken out, 57
When judgment is pleaded, 59
Pleading conditions precedent, 60
Private statute, how pleaded, 61
In libel and slander suits, 63
When deemed controverted, 65
What are material allegations, 66
Demurrer to, 38, 50
May be amended, 67
Time for filing may be granted, 68
Replevin may issue before, 99
When injunction may issue after filing, 114
Judgment on failure to answer, 150
Issue of law raised by, 152
Issue of fact raised by, 153
In partition suit, 270
Of joint defendants, 349
Of witness on examinations, 386
When it may be stricken out, 387-398
To mandamus, 446–451
In cases of contempt, 462
APPEAL.
What is an, 317
Who may, 319
Time allowed to and from what it will be, 320
How made, 321
Statement on, how made, 322
Failure to make, 323
Time to file statement may be enlarged, 324
Statement to be agreed upon or settled, 325
Statement to be annexed to judgment roll or order, 326

1868 4th Regular.pdf

ANSWER.
From order of court, 327
Review of intermediate orders on, 328
Power of appellate court, 329
When damages for delay may be given, 329
Papers to be furnished by the party appealing, 330
When it may be dismissed, 330
When it will stay proceedings, 334
Undertaking on, may be dispensed with or modified in certain cases, 337
How brought to a hearing, 341
From submission of controversy, 357
From award on arbitration, 366
From writ of certiorari, 440
To supreme from district court, when it will be, 331
Undertaking on, 332–335
Sureties of, 339
Stays proceedings upon the judgment, when, 340
Judgment on shall be certified to court below, 342
To district from probate court, when it will be, 343
How to be taken, 344
How brought to a hearing, 345
APPEARANCE.
Of married women, how and when, 7–8
Waives summons, 22
Voluntary appearance equivalent to personal service, 35
Is enough to authorize issuing a commission, 403–407
What constitutes, 494
May be by demurrer or answer, 494
APPELLANT.
Who is, 319
Must furnish papers, 330
Must file and serve statement on appeal, 322
Must file undertaking, 332
ARBITRATION.
Title to real property cannot be submitted to, 358
Who may agree to, 358
Submission, how to be made, 359
Judgment on by stipulation, 360
How awards shall be made 360
Revocation of submission, 360
Power of arbitrators, 361
Award to be in writing, 363
Award to be filled with the clerk of the court, 363
To constitute judgment, 363
Order to vacate award, 364
Rehearing of, 365
Modification of, 365
Decision upon motion may be appealed from, 366
Damages for, 367
Effects of revocation for, 367
ARGUMENT.
Case may be reserved for, 198
ARREST AND BAIL.
Action for malicious arrest, with what may be united, 64
No person to be arrested in a civil action except as prescribed by the code, 72
In what cases defendant may be arrested, 73
From whom order of arrest to be obtained, 74
When order of may be made, 75
Affidavit to obtain order, what to state, 75
Undertaking from plaintiff to be given, 75
Order when made, form and return, 77
Affidavit and order to be delivered to the sheriff and copy to defendant, 78
How made, 79
Defendant to be discharged on bail or deposit, 80
Bail, how given, 81
Bail may be reduced, 97, 98
Defendant may be arrested by bail, 83
Exoneration of bail on arrest, 82, 83, 85
Bail liable on undertaking, 83, 84
Money deposited to be refunded on giving bail, 93
Liability of sheriff on escape or rescue of defendant, 95, 96
Order may be vacated, 97, 98
Amount of bail on, may be reduced, 98
Of judgment debtor, 239
Of persons usurping an office or franchise and receiving fees belonging thereto, 311
Of defaulting witness, 389
When witness exonerated therefrom, 393
For contempt, when to be made, 457
ASSIGNEE.
Action by, 4, 5

HeinOnline -- 1867 14 1867

ASSIGNOR.
When shall not be a witness for assignee, 4
ASSIGNMENT.
Of an account, unliquidated demand or thing in action, 4, 5
Of promissory notes or bills, 5
Not to prejudice any set off or other defense, 5
Redemptioner to produce copy of, 234
Act relating to (repealed) 260
ATTACHMENT.
In what cases issued, 120
Affidavit on, what to show, 121
Undertaking on, effect of, 122
Form of writ and its requirements, 123
Time and manner of executing writ, 125
What may be attached, 124
Released by undertaking, 123, 136, 137
Several writs may be issued at the same time, 123
Rights and shares in stock of corporation or company liable, 124
Of real property standing in name of defendant, 125
Of real property belonging to defendant, standing on records in name of any other person, 125
Of personal property, 125
Of stocks and shares therein, 125
Of debits and credits, 125
Of credits and personal property, in hands of any other person than defendant, 126
Liability of such person on, 127
Such person may be examined on oath on, 128
Sheriff to make inventory of property and return with writ, 129
Sheriff may sell perishable property, 130
How to proceed if claimed by third person, 131
Sheriff may collect debts and credits under an, 130
Judgment to be satisfied out of property attached, 132
Remainder of attached property, if any, how disposed of, 133
Undertaking given to release may be prosecuted, 134
Application for order to discharge, 136, 150
Affidavit on above application, 139
Discharge of, 136, 138, 140
When sheriff to return writ of, 141
Against defaulting witness, 389
When may be issued for contempt, 457
ATTENDANCE.
Of witnesses and their rights and duties, 380, 394. See Witness.
ATTORNEY.
Court to appoint for absent defendant, 31
For concealed defendant, 31
For non-resident defendant, 31
Copy of amendments to complaint to be served on, 43
Every pleading to be subscribed by, 51
When to verify pleadings, 55
To state reasons why pleadings are not verified by party, 55
May require sheriff to take property from defendant in replevin, 101
Of plaintiff to notify sheriff as to credits or other property of defendant in possession of third party in attachment, 126
To be served with notice of appeal, 321
To be served with a copy of statement on appeal, 322
To sign agreed statement on appeal, 325
Of plaintiff to make affidavit in proceedings against joint debtors, 348
To verify memorandum of costs, 481
In certain cases not to be a witness, 374
Measure and mode of compensation of, 469
When to appear for defendant, 494
What deemed an appearance by, 494
What papers to be served on, 493, 495
How papers served on, 490, 491, 492, 493
AUTHORITIES.
Copy of and points to be furnished justices of supreme court before argument, 341
Copy also furnished to each party by the other, 341
Clerk to make copies in certain cases, 341
AWARDS.
Arbitrators compelled to make, 360
May be enforced by the court, 360
To be made by arbitrators on proof, 361
How made and effect of, 363
May be vacated, 364
Grounds for vacating, 364
Court may modify or correct, 365. See Arbitration.

B

BAIL.
May be given by defendants in arrest, 80, 81

1868 4th Regular.pdf

BAIL.
Defendant to be discharged on giving bail, 80
May surrender defendant, 82
May arrest defendant for the purpose of surrendering him, 83
When to be charged on undertaking, 83
May be exonerated, 82, 83, 85
When finally charged, 84, 85
Justification of, 87
Qualification of, 88
May be examined on oath as to sufficiency, 89
When sheriff liable as, 95
To be given by defendant usurping office and receiving fees therefrom, 311
To be given when party arrested for contempt, to be then discharged, 458. See Arrest and Bail; Undertaking.
BIDDER.
Refusing to pay amount bid at execution sale, 224
Officer to sell property again to highest, 224
Summary judgment against bidder refusing to pay, 224, 225
BILL.
Of items need not be set forth in a pleading, 56
Of items to be given opposite party on five days demand, 56
Further, may be ordered, 56
Of costs and necessary disbursements, 481. See Account and Affidavit.
BILLS OF EXCHANGE.
Action by assignee, 5
Not subject to set-off if assigned before due, 5
Persons severally liable upon may be included in same action, at option of plaintiff, 15
BOOK.
"Judgment," 201
Judgment in a controversy submitted to the court to be entered in, 355
Judgment on confession to be entered in, 354. See Writings.
BOND.
Official, of sheriff, when liable, 96. See Undertaking.
BOUNDARIES. See Metes and Bounds, 58

C

CALENDAR.
Clerks to enter causes upon, 156
How long causes to remain on, 156
CAPACITY.
Want of, to sue, ground of demurrer, 40
CAUSES OF ACTION.
Where laid, 18, 21
Improperly united ground of demurrer, 40
Complaint not stating sufficient facts to constitute, is ground of demurrer, 40
What may be set up as a counter claim, 47
Separate defenses to refer to such, as they are intended to answer, 49
When several may be united, 64
For what defendant may be arrested, 73
Limitation to foreign, 503
CERTIFICATE.
Of sale under execution of movable personal property, 227
Of sale of immovable personal property under execution, 228
Of sale of real property under execution, 229
What shall contain, 229
Duplicate to be filed with recorder, 229
CERTIORARI.
Writ of, 430, 431
What department, 430
By what courts granted, 431
When to be issued, 431
Application for, to be made on affidavit, 432
Court may require notice of application to be given to adverse party, 432
Order to show cause why it should not be allowed, granted, 432
Writ may issue without notice, 432
To whom directed, 433
How writ returned, 433
What to require, 434
If no stay of proceedings intended, what writ to contain, 435
How to be served, 436
How far review upon this writ to extend, 437
When return is defective, court may order further return, 438
Upon a full return, what to be done, 438
How judgment transmitted to an inferior tribunal, 439
Appeal from judgment on, may be taken to supreme court, 439
Same costs allowed as in other appeals, 480
CHALLENGE.
To jurors, 161
Peremptory, how many allowed, 161
For cause, ground of, 162

HeinOnline -- 1867 16 1867

1868 4th Regular.pdf

CHALLENGE.
For cause, how tried, 163
CHARGE
To the jury, what shall state, 165
Further charge may be given to jury in presence of parties, 108. Child, see Infant
CHOSE IN ACTION. See Things Action, 4, 5
Assignor of, cannot be witness for assignee in certain cases, 4
CIVIL ACTION.
How commenced, 22, 35. See Action
CLAIMS.
What may be united, 64
To recover specific real property, 64
To recover specific personal property, 64
Against a trustee, 64
For delivery of personal property, 99, 110
By third person in replevin, 109
By third person in attachment, 131
By third person on execution, 218
For an office or franchise, 310, 316
Action may be brought to determine adverse claim for money or other property, 438
Action brought to determine adverse claim to real property, 254, 263
For partition of real property, 261, 309. See Property, real and personal; Trustee; Replevin; Counter-claims.
CLERGYMEN.
When shall not be a witness, 375
CLERK.
Shall indorse complaint, 23
What he shall indorse on complaint, 23
To certify copy of complaint, 28
Affidavit of arrest to be filed with, 76
Summons to be signed by, 24
To issue writ of attachment, 121
To enter dismissal of suit, 148
To enter default of defendant, 150
To enter causes upon the calendar, 156
To call jury and enter consent of parties, 159
Shall record and read verdict, 173
To enter agreement of reference on the minutes, 182
To write down exceptions, if required, 189
To enter judgment, 197
To keep "Judgment Book," 201
Shall make judgment roll, 203
To arrange the several dockets, 206
May issue execution for deficiency in foreclosure suit, 246
To enter consent of tenant upon the minutes, 290
To have proceeds of sales belonging to unknown owners invested in their name, 301
Duties of, in regard to investments in his name, 303
To annex statement to judgment roll or order appealed from, 326
To certify copies of papers on appeal, 330
To receive on deposit, conveyance ordered to be executed by the judgment pending an appeal, 335
To qualify sureties on appeal bond, 337
Of supreme court to send remittitur, 342
With whom judgment roll filed to attach remittitur to judgment roll, and make entry on the docket, 342
To enter judgment by confession, 354
To enter in register the title of case submitted to arbitration, 360
To enter judgment on award of arbitrators, 363
To enter judgment on offer to compromise, 368
May take affidavit, 399
Of foreign court to certify to signature of judge, when, 402
To be served with notice of proceedings to perpetuate testimony, 413
To have commission returned to, 410
To transmit to court a certified copy of the verdict in issue on mandamus, 450
Shall include costs in the judgment, 482
Shall keep register of actions, 499
COGNOVIT, 368
COMMISSION.
To take testimony, 403, 419
To take testimony out of the territory, when issued, 407
By whom issued and to whom directed, 408
How testimony to be taken, 409
Interrogatories to be annexed to commission, 409
May be without written interrogatories by agreement, 409
What shall authorize the commissioner to do, 410
How forwarded, 410
Pending trial, not to be postponed in certain cases, 330. See Witness.
COMMISSIONER
Of this territory may take affidavits and depositions, 400

1868 4th Regular.pdf

COMMISSIONER.
Duties of under commission to take testimony, 410
COMPENSATION.
Between cross demands allowed, 48
To be made in partition of real property, 304
COMPLAINT.
Actions commenced by filing, 22
What clerk to indorse upon, 23
To be answered, 24, 38
Time in which may be answered, 25
To be one of the pleadings, 38
What shall contain, 39
Verification of, 51, 55
Defendant may demur to, 40
Grounds of demurrer to, 40
Demurrer to, to distinctly specify grounds of objection, 41
If amended to be filed, 43
Copy, amendments to, to be served, 43
When verified, what answer to contain, 46
Upon written instrument, 53
When need not be verified, 55
Irrelevant and redundant matter to be stricken out of, 57
To describe real property by metes and bounds, 58
How judgment pleaded in, 60
How condition precedent pleaded in, 60
How private statute pleaded in, 61
What to contain in an action for libel and slander, 62
What causes of action may be united in, 64
Material allegations in, to be taken as true, when not specifically denied, 65
May amend after demurrer, of course, without costs, 67
May be amended in other cases upon cause shown, 68
To be liberally construed, 70
Court may disregard error or defect in, where no substantial right is affected, 71
Injunction may be granted on, 112, 113
What to contain to authorize an injunction, 112
Must be verified, 113
For partition of real property, 265, 267, 273, 275
On usurpation of office or franchise, what to contain, 311
New, need not be filed against joint debtors, 347
Of a party refusing to testify, may be stricken out, 397
COMPROMISE.
Defendant may offer to, 368
CONCEALMENT.
Of defendant, ground for service by publication, 30
Of defendant, ground for appointment of attorney to appear for him, 31
Of property in replevin, what sheriff to do, 107
CONDITIONS.
Precedent, performance of, how pleaded, 60
CONFESSION.
Of Judgment, 352, 354
CONSOLIDATION.
Of action, may be ordered, 497
CONSENT.
To waive jury trial, to be in writing, 179
CONSUL.
Of United States may take affidavit, 401
Certificate of, to foreign record, 426
CONSTRUCTION.
Of pleadings, to be liberal, 70
CONTEMPT.
Witness or party in supplementary proceedings liable to be punished for, 245
Disobedience to a subpoena, 387
Of party refusing to be examined, 397
For disobeying order to inspect documents, etc., 421
For disobeying writ of mandate, 454
What acts deemed a, 455
How punished when committed in court, 456
How punished when not committed in court, 457
Person in, may be let to bail, 458
Sheriff to keep in custody person arrested for, 459
Person in, how may be discharged from arrest, 460
Person in, how to be examined, 462
Person guilty of may be fined or imprisoned. See Amended Act., p 245
For omission to perform an act in the power of a party ground for imprisonment till act be performed, 464
Is also indictable, 465
Party attached for, illness of, how to be confined, 467
Judgment or order in case of, final and conclusive, 468
Punishment for, 468

HeinOnline -- 1867 18 1867

CONTINUANCE.
Of a cause for absence of evidence, 158
In partition suit, when, 286
Of trial, etc., for unreturned commission, 411
CONTRACT.
Thing in action not arising out of, assignor not to be witness for assignee, 4
Several causes of action on, may be united, 64
Attachment may issue in action upon, 120
Affidavit to specify that defendant is indebted upon, 121
CONTROL. See Jurisdiction, 25
CONTROVERSY.
When court to determine, 17
Court may order third parties brought in, when, 17
May submitted without action, 355
Judgment entered as in other cases, 356
Judgment to be enforced, 357
Judgment subject to appeal, 357
May be submitted to arbitration, 358
CONVERSION.
Of money or property, ground of arrest, 73
CONVEYANCES.
In partition to be ordered, 297
To be recorded, 299
CONVICTS.
Unless pardoned, not to be witnesses, 372
To answer as to previous conviction, 386
CO-PARTNERS.
May be witnesses on own behalf, 398
COPY.
Of written instrument, when deemed admitted, 53
Certified, when to be evidence, 422
CORPORATION.
How summons served on, 29
Officer of, may verify pleadings, 55
How may be enjoined, 117
Rights or shares may be attached, 124
How attachment served on, 125
May be sued by judgment creditor, 244
Foreign may be compelled to give security for costs, 483
CORRECTION.
Of a award, when allowed, 171
Of an award, when allowed, 365
COSTS.
On nonsuit to be paid by plaintiff, 148
On judgment by default, 150
When plaintiff shall not recover, 225, 368, 473
In partition of real property, 280, 308
On usurpation of office or franchise, 316
Appellate court may tax, 329
On judgment by confession, 354
When submission to arbitration, revoked, 367
After offer to compromise, who shall not recover, 368
Allowed on writ of mandate, 452
Prevailing party allowed, 469
When allowed to plaintiff of course, 472
When allowed in only one action, 471
When allowed to defendant of course, 472
Separate defendants may recover, 473
On appeal in discretion of court in certain cases, 475
Of referees may be agreed upon by parties, 476
On postponement of trial, 477
In discretion of court or referee, 477
On tender before trial, 478
If tender be found true, no costs allowed plaintiff, 478
But plaintiff to pay defendant's, 478
Chargeable against estate, etc., in action prosecuted or defended by administrator, etc., 479
On certiorari or review, 480
Memorandum of items of, when delivered to clerk, 481
Judgment to include, 482
Costs to be entered in judgment within two days after they are taxed, 482
Non-residents to give bonds for, 483, 485
COUNTER CLAIM. See Set-Off, 46, 47
COUNTY.
Actions to be tried in which, 18, 21
Offense in two or more counties, where tried, 19
To be stated on summons, 24
To be specified in complaint, 39
COURT.
May determine controversies, where, 17
When, may order parties to be brought in, 17
Actions, how commenced in, 22

1868 4th Regular.pdf

COURT.
To be stated in summons, 24
Name of, to be stated in the complaint, 39
May order bill of items of account, 56
Takes judicial notice of statutes, 61
May allow answer after demurrer, 67
May impose terms on amendments, 68
May disregard errors and defects in pleadings, 71
May order arrest of defendant, 74
Upon what terms, 75
To endorse allowance on bail bond, 90
May vacate order of arrest or reduce bail, 97
In what cases, 98
May grant injunction, 111
When, 112
Not to grant after answer, without notice, 114
To restrain defendant till decision, 114
To require undertaking, 115
May order hearing for injunction, 116
Only may enjoin corporations, 117
May dissolve injunction, 119
May order property to be delivered after examination of garnishee, 128
May release attachment, 137
May order certain things to be deposited, 142
May appoint receiver, 143
May render a several judgment, 146
When, may grant non-suit, 148
May take account after default, 150
May appoint referee or jury to take account after default, 150
To try issues of law, 154
May grant continuance, 158
To try challenges for cause, 163
May order sick juror to be discharged, 164
To charge the jury, 165
May order cause to be re-tried, 169
May adjourn in absence of jury, 170
May direct sealed verdict, 170
May correct verdict, 172
May direct jury to find special issues, 175
To try issue of fact, 179
To decide what is a waiver of jury trial, 179
May order reference, 182-184
To dispose of objections to referees, 186
May grant new trial, 193
May compel party to satisfy judgment, 208
May restrain commission of waste, 235
May order judgment debtor to be examined, 238
May appoint referees for that purpose, 238
May order arrest of judgment debtor, 239
May require debtor of judgment debtor to be examined, 241
May order debtor to apply the debt to the payment of the judgment, 243
May forbid transfer of property of judgment debtor, 244
May punish for contempt, 345
May decree mortgaged property to be sold, 246
To direct payment of surplus money in foreclosure, after sale, 247
To order sale of foreclosed property, when debt not all due, 248
Shall give treble damages, when, 251
May grant order to enter upon property in dispute to survey, 258
May issue commission to take testimony out of the State, 407
May grant injunction during foreclosure and after sale, before conveyance, 261
To order lien holders to be made parties in partition suit, when, 273
To appoint referee to try liens, 273
To order partition or sale of lands, how and when, 275
To confirm or set aside report of referee, and appoint new ones, 278
To allow expenses of partition, 280
To direct application of proceeds of sale of encumbered property, 283
To order distribution, 285
To direct terms of sale of property, 288
To fix compensation of tenant whose estate has been sold, 291
To protect unknown tenants, 292
To ascertain and secure value of future contingent or vested interests, 293
To order conveyances to be executed, 297
To direct investment of proceeds of sale in partition belonging to unknown owners, 303
To adjudge compensation, in what cases, 304
To direct by whom costs shall be paid, 308
May appoint one referee in partition, 309
To enlarge time for filing statement, etc., on appeal, 324
To sign settled statement on appeal, 325
May review intermediate orders on appeal, 328
To fix amount of undertaking on appeal in certain cases, 334, 336

HeinOnline -- 1867 20 1867

COURT,
May modify or dispense with undertaking when the appeal is made by certain persons, 337
To qualify sureties on appeal bond, 339
May order perishable property to be sold pending appeal, 340
To determine controversy submitted without action, 355
May compel arbitrator to make award, 360
May vacate an award, when, 364
May modify or correct, 365
To postpone the trial or not, in certain cases, 378
May order subpoena to be served by the sheriff, 383
May issue warrant for the arrest of disobeying witness, 389
May order prisoner to be examined in certain cases, 390
May administer oaths, 418
May order inspection of writings, 421
May grant certiorari, 431
May issue writ of mandamus, 442
To hear writ, 44
May order jury trial, 447
May grant further time to reply in mandamus, 451
When answer raises no issue of fact, court shall proceed to hear application, 451
May order reference to assess damages, 452
To order peremptory mandate, 452
May fine or imprison party refusing to obey mandamus, 454
May punish for contempt summarily, 456
To endorse amount of bail on warrant for contempt, 458
To hear proceedings for contempt, 462
May allow costs, 473
May allow costs for defendants in some actions, 474
Discretionary on costs for appeal, 481
May order trustee or administrator to pay costs, 479
Tax, 479
May order undertaking for costs in certain cases, 483
See County, Supreme and District Courts, and Judge.
CREDITS AND DEBTS. See Debts, 125, 130, 240
CREDITORS.
May redeem, 231
CROSS DEMANDS
What demand compensated, 48

D

DAMAGES
Complaint to state amount of, demanded, 39
With what claims for, may be united, 64
After default court to order, assessed by jury in certain cases, 150
Excessive ground for new trial, 193
Treble allowed in actions of waste, 251
Treble allowed in forcible entry, 253
When set-off by improvement, 257
For usurpation of office or franchise, 314
Allowed when appeal taken for delay, 329
Witness disobeying subpoena, liable for, 388
Allowed on writ of mandate, 452
DEATH.
Father or mother may maintain action for, of child, 11
Guardian for death of ward, 11
Action not to abate by, of party, 16
Not to prejudice set-off, 48
Of defendant, exonerates bail, 85
Judgment upon verdict after, 202
On permission of probate Court, execution may issue upon judgment after, 215
Deposition may be read after death of witness, 405, 417
DEBTOR.
Of defendant to be served with notice of attachment, 126
Liability of, after notice, 127
Of judgment debtor, may pay sheriff, 240
May deny liability, 271
Proceedings against joint, 346, 351
Judgment may be examined, 238
Third parties may be examined as to property of judgment debtor, 241
See Joint Debtors.
DEBTS AND CREDITS.
How attached, 125
In attachment, notice to be given to party owing debts or holding credits, 125
May be levied upon, 217
Can be levied upon, when, 130
How levied upon, 130
Discharged by the sheriff's receipt, 130, 240
DEFAULT.
Judgment by, when, 150
If against a non-resident, 150

DEFAULT.
Relief not to exceed the demand in complaint, 147
When relief is granted in judgment by, 68
Writ of mandate not granted by, 445
DEFECT.
Of parties, a ground of demurrer, 40
When waived by the defendant in pleadings, 45
When defective, court may order further account, 56
In proceedings, when disregarded by the court, 71
DEFENDANT.
Is the adverse party, 2
Who may be made, 13, 14
Several may be joined as, 14
Defense by one or more, 14
Is summoned to appear and answer, 24
How he may waive summons, 22, 25
Summons, how served upon, 28, 29
When served by publication of summons, 30
Attorney may be appointed for, 31
When the action is against several, 32
May demur or answer, 38
When he may demur, 40
May answer, in what time, 25
May demur and answer at the same time, 42
May demur to the whole complaint or to one or more of several causes of action, 42
Answer to amended complaint, when, 43
May set forth several defenses, 49
Must be separately stated, 49
His answer, what to contain, 46
His answer, when to be verified by, 55
Who need not verify, 55
His signature deemed valid unless denied by, under oath, 53
When not personally served may answer in six months, 68
Can be arrested, when, 73
To be discharged on giving bail or deposit, 80, 81, 91
May apply for a reduction of bail or delivery from arrest, 97
To be served with certain papers in replevin, 102
The effect of his excepting to the sufficiency of the sureties, 103
The effect of his not excepting to the sufficiency of the sureties, 104
May be restrained after answer filed, 114
May be heard before injunction issues, 116
May move to dissolve injunction, 118
What papers to be used in the motion, 118
His property may be attached, 125
What property may be attached, 124
How attached, 125
May have attached property redelivered, 133
May in attachment have judgment, 135
May move to discharge attachment, when, 136, 138
May have nonsuit entered, 148
Judgment against, in default, 150
May bring issue to trial, 157
May take a dismissal, 157
May challenge jurors, 161
May waive trial by jury, 179
May object to referee, 185
May move for a new trial, 193
May bring cause before the court for argument, 198
May have judgment, when, 199
May be arrested for usurpation of office, 311
Judgment for or against, 312
To pay damages for usurpation of office, 314
May be fined, 316
Must verify confession of judgment, 353, 374
To recover costs, when, 471
To recover costs after tender to plaintiff, 478
May demand security for costs in certain cases, 483
When he shall be deemed to have appeared, 494
DEFENSES.
Action by assignee without prejudice to, when, 5
When new matter constitutes a, 46
Defendant may set forth several, 49
Each shall be separately stated, 49
Plaintiff may demur to, 50
The court may strike out sham and irrelevant, 50
When deemed genuine and duly executed, 54
May state what in libel and slander, 63
DELINQUENT.
Bidder at execution sale, 224, 225

DELIVERY.
Of property purchased at execution sale, when, 227
Of certificate, when given, 227, 228
Of certificate, when sufficient to pass property, 228
DEMAND.
Of bill of items, when and how, 56
Assignor not a witness for assignee in unliquidated, 4
DEMURRER.
By defendant, when, 22
Waives summons, 22
To be filed with clerk, 38
On whom served, 38
In a part of the pleadings, 38
To the complaint, when to be filed, 40
Causes of demurrer, 40
To state grounds distinctly, 41
To the whole complaint, when, 42
May demur to part and answer to part, 42
May demur and answer at the same time, 42
To answer and defenses, when, 50
Time within which plaintiff may demur, 57
After, either party may amend, 67
If, to complaint overruled, court may allow answer to be filed, 67
If, to answer overruled, facts alleged considered denied, 67
DENIAL.
Of the complaint, when specific, when general, 46
Must be verified or written instrument will be deemed genuine, 53, 54
DEPOSIT.
Made by defendant, discharge him from arrest, 80, 91
To be paid into court by the sheriff, 92
May be withdrawn on giving bail, 93
How disposed of after judgment, 94
When paid into court, 142
Of surplus in court on foreclosure, when, 247
Must be made, with whom on appeal, 332–340
DEPOSITION.
When may be taken, 403
Affidavit, 429
To be read, to whom, signed, sealed, 405
May be read as evidence at any stage of the same action, 406
Of witnesses out of the State, when taken, 407
DEPUTY.
Sheriff, service of, summons by, 28
DETAINER.
Complaint, when to recover treble damages for, 253
DISABILITY.
Of a party insufficient to cause abatement, 16
DISBURSEMENTS.
Allowed, if necessary, 469
To be verified, by whom, 510
DISCOVERY.
Of new evidence, ground for new trial, 133
Under oath, how obtained, 395
DISMISSAL.
Of an action may be taken, when, 148
Either party may take, 157
For not giving security for costs, 485
Of appeal, if the requisite papers are not furnished, 330
Of appeal from the probate court, when, 345
DISOBEDIENCE.
Of a witness to a subpoena, how punished, 384-388
Of a peremptory mandate, how punished, 454
Of any writ, when duly served, a contempt, 455
DISQUALIFICATION.
Causes of, in jurors, 162
Objection to the appointment of referee, for, 185
DISTRICT COURTS.
How civil action commenced in, 22
Appeals to supreme court, from, 331
Judge of, may order arrest of person usurping office, 311
Judge of, may order deposition of prisoner to be taken, 390
DISTRICT ATTORNEY.
When prosecuting action on behalf of Territory, need not verify pleadings, 55
Action for usurpation of office or franchise, to be brought by, 310
When to be brought by, 310
What to state in complaint in such action, 311
DISTRICT JUDGE.
May order arrest of defendant, 74
Upon what affidavit, 75
Shall require undertaking on arrest, 76
May indorse allowance on bail bond, 90

DISTRICT JUDGE.
May grant injunction, 111
When it may be granted, 112
To require undertaking on injunction, 115
May hear defendant before issuing writ, 116
Not to stop business of corporation, 117
May dissolve injunction, 119
May release attachment, 137
May order judgment debtor to be examined, 238
May appoint referee for the purpose, 238
May order arrest of judgment debtor, 239
May grant order to survey property in litigation, 258
To enlarge time to file statement on appeal, 324
To sign settled statement on appeal, etc., 324
To fix the amount of appeal on undertaking in certain cases, 334
To qualify sureties on appeal bond, 339
May order prisoner to be examined as witness in certain cases, 90
May take affidavit, 399
May issue commission out of the state, 408
May administer oaths, 418
May order inspection of writings, 421
May grant certiorari, 430
May issue mandamus, 442

DOCKET.
What entries to be made of judgment, 204
What is judgment, 205
Judgment may be inspected by the public, 206
How judgment may be made a lien on property in another county, 207
Copy of, on redemption requisite, 234
Judgment of appellate court to be entered in, 346

DOCUMENTS.
Court may order inspection of, 421
When evidence of contents of may be given aliunde, 422. See Writings, Records.

DUCES TECUM.
Subpoena may require, 389 See Evidence.

DUPLICATE.
Of certificate of sale on execution to be recorded, 229

E

EMBASSADOR.
Of United States to take affidavit, 401
To certify record of foreign court, 426

EMBEZZLEMENT.
Of money, ground of arrest, 73

ENTRY.
Damages, for unlawful, trebled, 253

ERRORS.
When may be disregarded in pleadings, 71
In law, at trial, ground for new trial, 193

ESTATE.
For life or years, 282

EVIDENCE.
In action for libel or slander, 63
Postponement of trial on ground of absence of, to be granted only on affidavit.
Newly discovered, ground for new trial, 193
Also insufficiency, 193
Of documents, records, etc., 421, 428
Offer to compromise not to be given in, 368
Deposition to be, 406

EXCEPTIONS.
May be taken to referee's decision, 187
What are and when taken, 188
Point of to be particularly stated, 189
To be in writing, 189
May be in judge's minutes, 189
Require no particular form, 190
To be brief, 190
When decision deemed excepted to, 191
May be taken to sufficiency of sureties or replevin, 103
To sufficiency of sureties on appeal, 339

EXCESS.
To be paid in person entitled in foreclosure suit, 247
Defendant to have judgment for, when counter claim exceeds plaintiff's demand, 199

EXECUTION.
For balance in attachment, 133

EXECUTION.
May issue within five years, 209
How to issue and to whom, 210
What to require, 210
In action upon joint contract, 211
When to be returned, 212
To enforce judgment, 213
May issue upon order of probate court after death of judgment debtor, 215
What property liable to, 217
How debts and credits to be subject to, 217
Not to affect property until levy, 217
Claim by third person under, 218
Claim to be determined by sheriff's jury, 218
What exempt from, 219
How writ of, executed, 220
Notice of sale under, 221
Penalty for selling property under, without notice, 222
How property to be sold under, 223
Against delinquent bidder, 225
Liability of officer in certain cases, 226
Delivery by officer of property purchased under, 227, 229
Real property, how redeemed, 230
Who may redeem property sold under, 230
When sale under becomes absolute, 232
Proceedings supplementary to, 238, 245
Waste may be restrained until execution of conveyance under, 23
For deficit after foreclosure, 246
Damages for injury to property sold under, to be recovered by purchase, 262
May issue for costs in, and damages, mandamus, 452

EXECUTOR.
May sue by himself without joining cestry que trust, 6
See Administrator.

EXEMPTION.
What subject to, from execution, 219

EXONERATION.
Of bail, what is, 82, 83, 85

EXPRESS TRUST.
Trustee of, who is, 6

F

FACTS.
To be stated in complaint, 39
Not sufficient in complaint, is ground of demurrer, 40
Objection to want of sufficient not waived, 45
Trial of question of, not in pleadings, 3
How issue of arises, 153
Separate finding of, on decision, 180
To be agreed upon, on submission of controversy, 355. See Issues.

FATHER.
May sue for injury or death of child, 11

FEES.
Of witnesses to be tendered, 382
Of attorneys, 369
Of referees, 476

FELONS.
Not to be witnesses, 372

FINDINGS.
How given, 180

FINES.
Amount of, for contempt, 468
Amount of for usurping office, etc., 316. See Contempt. Disobedience.

FIRE ENGINES.
Exempt from execution, 219

FOREIGN COURT.
May take affidavit, 401

FOREIGNERS.
Of mortgages, 246, 248
Sale of property under, 246
Surplus under, to be paid defendant, 247
When debt not all due, 248
Only remedy under mortgage, 260
Where action to be brought by, 18

FORFEITURE.
A statutory penalty, 19
Action for the recovery of, where tried, 19

1868 4th Regular.pdf

FRANCHISE.
As to usurpation of office, etc., 310, 316
See Office.
FRAUD.
Is a ground for arrest, 73
FURNITURE.
What exempt from execution, 219

G

GARNISHEE.
May be examined under oath, to furnish memorandum to sheriff, 129
Sheriff's receipt to be discharge of, 130
GARNISHMENT. See Attachment.
GUARDIAN.
Infant to appear by, 9
How appointed, 9, 10
May maintain action for injury or death of ward, 11
May be sued for committing waste, 250
In certain cases, securities of infants to be in name of, 289
Not to purchase land in partition except for infant's benefit, 295
Proceeds of sale of infant's share in partition to be paid to, 305
Same as to insane person, 305
May consent to partition in certain cases, 307
See Infants.

H

HIGHWAYS.
Persons taking wood from liable for damages, 251
Where timber taken to repair, value to be paid, 252
HUSBAND.
When to be joined with wife, 7
When not to be joined, 7
Not to be witness for or against wife, 373

I

IMMATERIAL MATTER.
May be stricken out, 50
INADVERTENCE.
Defendant may be relieved from judgment taken through, 68
INDIANS.
Shall not be witnesses, 372
INFANT.
Shall sue and appear by guardian, 9
How guardian appointed for, 9, 10
How summons served on, 29
Securities of to be taken by guardian, 289
Guardian to receive proceeds of sale for, 305
When cannot be witness, 362
INJUNCTION.
What is an, and how granted, 111
How enforced, 111
In what cases granted, 112
At what time granted, 113
Complaint and affidavits must show ground for, 113
What papers to be served with, 113
Not allowed after answer, but upon notice, 114
Defendant may be restrained until decision, 114
Undertaking on part of plaintiff, 115
Court may order requiring defendant to show cause why writ should not issue, 116
Against corporation, to suspend business of, 117
Motion to dissolve or modify, 118
When to be dissolved or modified, 119
INJURY TO CHARACTER.
Action for and for malicious arrest or prosecution, may be joined, 64
Defendant may be arrested in actions for, 73
INSANITY.
Service of summons on person of unsound mind, 29
Guardian may receive proceeds of sale on partition, 306
Guardian may consent to partition and execute release, 307
Persons laboring under cannot be witnesses, 372
INSTRUCTIONS TO JURY.
What instructions shall state, 165
Shall be furnished in writing to either party upon request, 165
Additional may be given after jury have retired, 169

HeinOnline -- 1867 26 1867

INSTRUMENTS IN WRITING.
Subpoena may require witness to bring, 380
Party may be ordered to give inspection and copy of certain, 421
Penalty for non-compliance with order, 421
When evidence aliunde of contents of, may be given, 422
When altered party shall account therefor, 423
INTEREST.
Real party in to bring action, 4
Who may not be witnesses on the ground of, 370
Test of, which shall render witness incompetent, 371
On verdict, to be included in judgment, 482
INTERPRETER.
Shall be sworn for a witness ignorant of the English language, 379
INTERROGATORIES.
Direct and cross may be annexed to commission to take testimony, 409
May be settled by judge granting commission, 409
Witness shall be examined in answer to, 410
IRREGULARITIES IN PROCEEDINGS.
As ground for new trial, 193
Purchaser of real property, evicted on account of, may recover price paid, 237
On failure to recover judgment may be revived against debtor, 237
IRRELEVANT MATTER.
May be stricken from pleadings, 50, 57
ISSUES.
Of fact not raised by pleadings may be ordered to be tried by jury, 3
Defined and classified, 151
Of law, when they arise, 152
Of law, how disposed of, 154
Of fact, when they arise, 153
Of fact, how to be disposed of, 154
Of fact, decision on, when tried by court, 180
Of fact, trial by jury may be waived, how, 179
If issues of law and fact, those of law to be first disposed of, 155
Reference may be ordered to try all the, 182
Causes shall be entered on calendar by date of, 156
To remain on calendar until disposed of, 156
Either party may bring issue to trial, 157
Trial of, in actions against joint debtors, 351
Trial of, in applications for mandamus, 447
ITEMS OF ACCOUNT.
Need not be set forth in pleadings, 56
Party shall after demand give bill of, 56
Court may order a further bill of, 56

J

JOINDER.
Of parties, executor, etc., need not join the person for whose benefit the action is brought, 6
When husband must be joined when married woman is a party, 7
All parties in interest shall be joined, 12, 14
If consent of plaintiff be not obtained, he shall be made defendant, 14
In questions of general interest one may represent all, 14
Parties severally liable on any instrument may be joined or not, 15
Of causes of Action—What causes of action may be joined, 64
JOINT DEBTORS.
Proceedings when summons is not served on all, 32
Execution on judgments against, 211
May be summoned to show cause when judgment is not obtained against all, 346
Need not file new complaint, 347
Summons, what to contain, 347
Summons shall be accompanied by affidavit, 348
Answer to such summons, what to contain, 350
Issues tried as in other cases, 351
JOINT DEBTORS.
Statute of limitations cannot be set up, 350
Judgment shall be for balance due and interest, 351
JUDGE. See District Judge.
JUDGMENT.
When plaintiff may take, 26
How pleaded, 59
Party may be relieved from, in certain cases, 68
Not to be reversed for immaterial error in the pleadings, 71
Defendant may be arrested any time before, 77
How satisfied in attachment suit, 132
What it is, 144
May be entered at any time, 144
How to be entered where there are several parties, 145, 146
What relief to grant, 147
Of nonsuit where to be entered, 148
When to be on merits, 149

JUDGMENT.
May be given by default, when, 150
To be entered upon decision of court, 180
May be upon issue of law, 181
When to be entered, 197
May be for defendant for excess of set-off, 199
May be for possession of personal property, 200
Book to be kept by clerk, 201, 354, 356
Not to be lien in case of death, 202
Transcript of docket may be recorded in other county and be there a lien, 207
How to be satisfied, 208
Execution upon may issue at any time within five years, 209
To be enforced by execution, 213
When certified copy of to be served, 213
When and how execution to issue upon, after death of party, 215
May be summary against delinquent bidder at sheriff's sale, 225
How and in what cases may be revived, 237
Defendant may be arrested after, 239
Creditors may prosecute to, actions to recover debts of judgment debtor, 244
May be to abate or enjoin nuisance, 249
To be according to fact when interest of plaintiff terminates during action, 256
In partition, on whom to be conclusive, 278
In partition, whom not to affect, 279
In action against usurper, what to be, 312, 314, 316
When final to be appealed from, 320
May be reviewed on appeal, 317, 341
May be against one or more, 346
When to be denied by joint debtor, 350
May be for surplus of original, 351
By confession, how and when entered, 352, 354
Upon submission of controversy without action, how and when entered, 355, 357
May be entered upon an award, 360, 363
May be entered upon offer, 368
To carry costs, 474, 482
On writ of mandate, 452 See Dismissal; Non-Suit; Default; Execution.
To summons jury to try issue in mandamus, 449
May punish summarily for contempt in certain cases, 456
To indorse amount of bail on warrant for contempt, 458
See Court.
Roll, what to constitute, 203
To be entered in docket, 204
To be a lien on real property for two years, 204
Docket, what to contain, 205
Docket to be open for inspection, 206
JUDGMENT CREDITOR.
If purchaser evicted, to be liable, 237
May require order to examine debtor, 238
JUDGMENT CREDITOR. May require arrest of debtor, 238
Execution against, 210
May point out property to sheriff to sell under execution, 220, 223
May redeem property sold, 230
When he may redeem, 231
What payments to be made, 233
May be required to appear and answer as to his property, 238
May be arrested, when, 239
May be punished for contempt, 245
What portion of wages of, to be exempt from execution, 219
JURISDICTION.
Of court, acquired by service of summons and complaint, 35
Also acquired by voluntary appearance, 35
Want of in the court, ground of demurrer, 40
Objection to, never waived, 45
In pleading a judgment, facts conferring jurisdiction need not be stated, 59
If controverted, must be proved, 59
JURORS.
How drawn to try causes, 159
Number of, 159
Parties may consent to any number of, not less than three, 159
Substance of oath of, 160
May be challenged by parties, 161
On what grounds may be challenged, 162
May be discharged when sick, 164
May make notes during the trial and use then during the deliberation, 167
What is verdict of, 174
Affidavit of, to impeach verdict, 193
Act regulating fees of, p, 246
May be witness, 378
Act relating to payment of, p, 259

HeinOnline -- 1867 28 1867

JURY.
To try question of fact, not in issue by pleadings, 3
Sheriff may summon in attachment where property claimed by third person, 131

L

LAW.
Issue of law, how defined, 151
Trial by the court, conclusions of law and fact to be separately stated, when, 180
Decision to be filed with the clerk, 180
For errors of, new trial to be granted, 193
LEASEHOLD.
Subject to redemption, when, 229
LEVY. See Execution.
LIABILITY.
Joint and several; of defendants, how prosecuted, 32
Upon obligations and instruments in writing, 15
Confession of judgment to secure contingent liability to state facts constituting, 353
Of officer arresting and detaining witness, 394
LIBEL.
How stated in complaint, 62
What answer may contain, 63
LIEN.
Of judgment, 202, 254, 207
Foreclosure of, 246
In partition suits, 273
To be notified to appear before referee, 274
When on an undivided interest, 281
Holder may be ordered to exhaust other securities, 284
When holder becomes purchaser, 298
LIMITATION.
Of action arising out of this territory, 503
LIS PENDENS.
Notice of what to contain, 27, 207
Effect of, 27, 207, 267
Where filed, 27, 267

M

MANDAMUS.
Writ of, how denominated, 441
By whom issued, 442
To whom issued, 442
Who may not issue it, 442
In what cases it shall issue, 443
Shall issue upon affidavit, 443
Party beneficially interested to make the application, 443
Writ shall be alternative or peremptory, 444
Alternative shall state allegation, 444
Shall command party to perform the act required or show cause, 444
Peremptory writ, 444
Order to show cause omitted, 444
Return day shall be inserted, 444
When application made without notice alternative writ shall issue, 445
Upon application after notice, peremptory shall first issue, 445
Time required to constitute due notice, 445
Writ not to be granted on a default, 445
Case to be heard even if adverse party be absent at the hearing, 445
Adverse party may show cause on return of alternative, 446
Answer under oath, 446
Question of fact may be tried by jury, 447
Order for jury discretionary with the court, 447
Argument to be postponed, 447
Verdict to be verified to court, 447
Question to be distinctly stated in the order, 447
County to be designated, 447
Order may direct jury to assess damages, 447
Applicant may introduce proof on trial, 448
Either party may move for a new trial, 449
Statement required, 449
Motion for new trial, 449
Before whom brought, 449
When to be brought, 449
Upon new trial, jury to be summoned, 449
Within what time, 449
Parties may agree upon time, 449
Jury to try issue, 449
When new trial shall not be had, 449
Clerk to transmit certified copy of verdict, 450

MANDAMUS.
To whom it shall be transmitted, 450
Within what time, 450
Either party to bring on argument of application, 450
Notice to be given to adverse party, 450
When no answer made, case heard on papers of applicant, 451
Answer not raising question of fact may be tried without jury, 451
Answer explained or avoided by reply, 451
Court to grant time for replying, 451
Discretionary with the court, 451
Answer and reply raising questions of law, only, to be heard by the court, 451
Statement not affecting the substantial rights of parties may be heard by the court, 451
Court may fix time for the argument, 451
Applicant shall recover damages sustained, 452
Jury may find such damages, 452
Court or referee may determine said damages, 452
Reference may be ordered, 452
Costs shall be allowed, 452
Execution may issue, 452
Peremptory mandate shall be awarded, 452
Writ, how served, 453
Court may direct mode of service, 453
Fine for disobedience to peremptory writ, 454
Parties persisting in disobedience to peremptory writ may be imprisoned, 454
Court may make order for enforcement of writ, 454
MARRIED WOMEN.
When husband shall be joined, 7
When married women may sue alone, 7
When she may sue and be sued alone, 7
When she may defend her own right, 8
Her husband not to be witness against her, 373
Wife not to be witness against her husband, 373
Neither to be examined as to any communication between each other during marriage, 373
Neither to be examined after marriage, 373
Either party may consent to such examination, 373
Consent not necessary in action by one against the other, 373
Testimony of husband and wife to establish marriage may be taken and perpetuated, 413
MATTER.
Redundant may be stricken out, 57
Irrelevant may be stricken out, 57
By whom to be stricken out, 57
How to be stricken out, 57
Person aggrieved may make motion, 57. See New Matter.
MEMORANDUM.
Judgment creditor shall make, of costs and disbursements, 475
Shall be verified by party, 475
Attorney shall verify the same, 475
What verification shall state, 475
To whom delivered, 475
Within what time, 475
METES AND BOUNDS.
Shall be described in complaint, 58
Survey and measurements may be ordered, 258
For what purpose may be allowed, 258
Who may grant the order, 258
Motion for order to survey, 258
Who may make motion, 258
Notice required, 258
Party may enter upon property under order, 258
Order shall describe property, 259
Copy of order shall be served on owner or occupant, 259
Surveyors and assistants necessary may enter upon property, 259
May make survey and measurement, 259
Party liable for unnecessary injury, 259
MINISTER.
Of United States shall take affidavit, 426
MINOR. See Infant.
MISJOINDER.
Of parties to be demurred to, 40
Of causes of action to be demurred to, 40
MISTAKE.
In name of party may be corrected, 68
In other respects may be corrected, 68
Terms may be imposed, 68
Party may be relieved of judgment, order, etc., taken against him, 68
Costs to be paid, 68
MODIFICATION.
Of verdict may be made, 172
When it may be done, 172

MODIFICATION.
Under whose advice it may be done, 172
Jury may be sent out to bring in new verdict, 172
Of award, 365
By whom done, 365
Motion requisite, 365
May be made if there be a miscalculation of figures, 365
Mistake in description of person or property, 365
When award, if made upon matters not submitted, 365
When it could have been amended if it had been a verdict, 365

N

NAME.
Of parties, pleading may be amended as to, 68
Of defendant, when plaintiff is ignorant of, 69
NEGLIGENCE.
Relief from judgment taken through excusable neglect, 68
NEW MATTER.
Answer may contain, constituting defense, 46
Plaintiff may demur to sufficiency of, 50
Shall be taken to be controverted on trial, 65
Issue will arise upon, 150
NEW TRIAL.
Definition of, 192
Immaterial exceptions disregarded on motion for, 188
Report of judge or referee deemed excepted to on motion for, 191
When motion for will be granted, 193
Irregularity in the proceedings ground for, 193
Abuse of discretion ground for, 193
Misconduct of jury ground for, 193
Accident or surprise ground for, 193
Newly discovered evidence ground for, 193
Excessive damages ground for, 193
Insufficiency of evidence to justify the verdict ground for, 193
Error in law ground for, 193
Application for, how made, 194
When notice of motion for, 195
Time for filing affidavit or statement, 195
Settlement of statement, 195
Adverse party may use counter affidavits, 195
Application to be made for, without delay, 196
Appeal may be taken from order granting or refusing, 320, 331
On application for mandamus, 449
NON-RESIDENT.
Where to sue or to be sued, 20
Affidavit for publication of summons against, 30
Service of summons on, 31
Court may appoint attorney to appear for, 31
Verification of pleadings when a party is, 555
Property of may be attached, 120
Proof of claim after default of, 150
Judgment by default against, may be opened, 68
Service of summons on, in partition suits, 269
Investment of funds of, on sale in partition suits, 300, 303
May be required to give security for costs, 483
Sureties on cost bond shall justify, 484
If security be not given, action may be dismissed, 485
Service of papers on, after appearance, 495
NON-SUIT.
When judgment of non-suit may be entered, 148
NOTES.
See Promissory Notes.
NOTICE.
Plaintiff may file lis pendens, in actions concerning real estate, 27, 267
Of motion for new trial to be given, when, 195
Within what time statement for motion for new trial to be filed after, 195
To be given of settlement of statement, 195
Of motion, what time necessary, 488
Service of, on party resident, 491
Service of, by mail, 492, 493
Defendant entitled to notice of proceedings, after appearance, 493
Service of, when party is non-resident, 494
Service of, shall be upon attorney, 495
NUISANCE.
What is a, 249
Judgment in action for, 249

O

OATHS.
Who may administer, 418
How a person sworn, 418
Affirmation, how given, 420
Arbitrators may administer, 361
Person may make affirmation instead of, 420
False affirmation is perjury, 240
See Affidavits; Sureties.
OBJECTIONS.
See Answer; Demurrer; Exceptions.
OFFER.
Of defendant to allow judgment to be taken against him, 368
How accepted by plaintiff, 368
Deem withdrawn, if not accepted, 368
Not to be given in evidence, 368
OFFICE.
Action may be brought for usurping, 310
District attorney to bring action for usurping, 310
Defendant may be arrested for receiving fees belonging to, 311
How usurper may be discharged from arrest, 311
Damages for usurpation of, 314
Usurper may be fined and excluded from, 315
Action may be had against several claimants of, 315
OFFICER, PUBLIC.
Action against, where tried, 19
Action touching any act done in virtue of office, where tried, 19
Action touching any official duty of, where tried, 19
How judgment or determination of, pleaded, 50
May be arrested for embezzlement, 73
May be arrested for fraudulently applying money, 73
May be arrested for converting money to his own uses, 73
Not to be examined as a witness in certain cases, 376
May order subpoena to be served by sheriff on a concealed witness, 383
Issuing subpoena, may issue warrant for arrest of witness, 389
When not liable to witness arrested, 394
Authorized to take testimony or decide upon evidence, may administer oaths, 418
Act regulating fees of, p. 246
Disobeying writ of mandamus may be fined, 454
Act relating to payment of, p. 259
OPINION.
Of judge to be furnished by appellant to appellate court, 330
ORDER OF ARREST.
From whom obtained, 75
When to be made, 75
Affidavit to obtain, to be filed, 75
Undertaking required before making, 76
What to accompany, 77
How executed, 78, 79
When and how returned, 86
May be vacated, 97
See Arrest.
ORDER OF COURT.
To bring in other parties, when, 17
For trial of fact not in issue by the pleadings, 3
To serve summons by publication, 30
Shall direct publication for a certain period, 311
To appoint attorney for absent defendant, 31
Restraining defendant, pending motion for injunction, 114
To show cause why an injunction should not issue, 116
To survey property in dispute, 259
Appeal from, 317, 328, 331
Made out of court may be vacated, 318
Appeal from, 320
Of arbitration by consent, 360
To have prisoner examined as witness, 391
Of arrest. See Arrest.
To take depositions, 404
To issue commission to take testimony out of the territory, 408
To perpetuate testimony, 413
Shall be served or published according to the particular case, 413
To show cause why warrant for contempt should not issue, 457
ORIGINAL.
Writing, loss of to be shown before, other evidence allowed, 422
In what case other evidence than the, allowed, 422
See Writings.

P

PARTIES.
Names of, in civil actions, 2

1868 4th Regular.pdf

PARTIES.
In interest, to prosecute actions, 4
What, to be joined as plaintiff, 14
What to be joined as defendant, 14
Severally liable may or may not be joined at plaintiff's option, 15
Court may determine any controversy between, 17
May be ordered brought in, 17
To an action to be stated in summons, 24
To an action to be stated in complaint, 39
Another action pending between same, ground of demurrer, 40
Defeat of, ground of demurrer, 40
Misjoinder of, 40
Pleadings may be subscribed by, 51
Pleadings may be verified by, 55
Need not set forth items of account in a pleading, 56
May amend pleadings, of course, 67
Name of may be stricken out or added to pleadings by court, 68
Errors in pleading not affecting substantial rights of, to be disregarded, 71
May have non-suit entered, 148
May bring issue to trial, 157
May consent to a jury less than twelve, not less than three, 159
May waive jury trial, 179
May agree to reference of cause, 182
Not consenting, when reference may be ordered, 183
To agree upon referees, 184
May object to referees, 185
To actions to determine claims to real property, 254
May enter upon land to survey the same, 258
To action for partition of real property, 264
In partition, interest of all to be set forth in complaint, 265
If unknown that fact to be set forth in complaint, 265
To pay expenses of partition, 280
May consent to one referee in partition, 309
Adverse to be served with notice of appeal, 321
To sign agreed statement on appeal, 325
Either of the, may bring appeal to hearing, 335
Refusing to be sworn, may have pleadings stricken out, 309
May agree upon case without action, 355
When may be witnesses, 396, 377
When to be examined, 396
Refusing to testify, may be punished for contempt, 398
May have deposition taken, 404
May attend examination of witness by deposition, 405
PARTITION.
Of real property, 264, 309
When an action for may be brought, 264
In what county action for may be tried, 18
Complaint in, what to state, 265
Lis pendens to be filed in action for, 267
How summons in, to be directed, 268
Party is out of the Territory, 269
What answer in, to contain, 270
What rights may be determined in, 271
How rights of unknown parties in, determined, 271
Lienholders to be made parties to a, 273
Lienholders to be brought into, by amendment or supplementary complaint, 273
Lienholders in, to be notified to make proofs, 274
Court may order property sold in, where no division can be made, 275
Court to order when, 275
How to be made, 276
Referees in, to make report, 277
Court may confirm or set aside report of referees in, 278
Effect of, 278
Judgment in, not to affect tenants for years less than ten, 279
Referees expenses in, how paid, 280
How lien on undivided share affected by, 281
How life estate in undivided share affected by, 282
When property ordered sold in, how proceeds applied, 283, 285, 286. See Property Real.
PARTNERS. See Companies.
PENALTY, STATUTORY.
When enforced and in what county tried, 19
PENDENCY OF ACTION.
Notice of, where filed, what to contain and effect of, 27, 207, 267
PEOPLE.
Who to verify pleadings in actions by, 55
Injunction granted against corporation in action by, 117
Action for usurpation of office or franchise to be brought in the name of, 310
PERFORMANCE.
Of conditions precedent, how pleaded, 60

HeinOnline -- 1867 33 1867

PERISHABLE.
Property attached to be sold, 130
Property levied on under execution to be sold on notice, 221
PERPETUATE TESTIMONY.
Proceedings to, 412, 417
Application to, to be by petition duly verified, 413
What petition to show, 413
Examination to be before judge, 413, 414
How examination conducted, 415
Depositions taken under proceedings to, to be used as evidence on trial, 417
PERSONAL PROPERTY. See Property; Replevin.
PERSONS.
When expressly authorized by statute, may sue for benefit of other parties, 6
Of unsound mind, how commenced, 29
When, may be required to attend as witness, 80
Present in court may be made witnesses, 384
See Parties.
PETITION.
To perpetuate testimony, what to contain, 412, 413
PHYSICIAN.
Not to be witness in certain cases without the consent of patient, 376
PLACE.
Of trial of civil actions, 18, 21
Actions to be tried, where subject matter situated, 18
Actions to be tried where cause of arose, 19
Actions to be tried where parties reside, 20
Of trial, may be changed by court on motion, 21
PLAINTIFF.
Is the party complaining, 2
All having interest may be joined, 12
Who may be made plaintiffs, 12
When made defendant, 13
Who must be joined as plaintiffs, 14
Who must be joined as defendants, 14
When one or more, may sue for the benefit of all, 14
When they may in one action sue when persons severally liable, 15
May apply for judgment or relief, 26
Pleading of, 28
Demur to defect of parties, 40
Demur to answers of defences, 50
Must deny signature of instrument set up in answer, 54
How and when, 54
Must swear to complaint, 55
Who is excepted, 55
May unite several causes of action, 64
May have defendant arrested, 73
Affidavit for arrest of defendant, 75
Must give undertaking, 76
May except to sureties on bond of release of defendant, 86
Must be served with notice of justification of sureties, 87
May claim delivery of personal property, 99
Must make affidavit for delivery, 100
May request sheriff in writing to take possession of property, 101
Must give undertaking, 102
Property to be re-delivered on failure of defendants sureties to justify, 105
May claim replevied property, 109
When he may obtain injunction, 112
To give bond on injunction, 115
Who need not give bond, 115
May oppose motion to dissolve injunction, 118
To make affidavit for attachment, 121
To give undertaking on attachment, 122
To notify sheriff as to credits of defendant, subject to attachment, 126
Judgment for, in attachment, 132
May sue on bond to release attached property, 134
May require sureties on release bond to justify, 137
May oppose motion to discharge the attachment, 139
When no answer, is filed what relief he shall obtain, 147
May dismiss action, 148
To demand judgment after service of summons by publication, 150
May bring issue to trial, 157
May take verdict, 157
May challenge jurors, 161
Shall have four peremptory challenges, 161
May waive jury trial, 179
May object to referee, 185
May move for a new trial, 193
May bring cause before the court for argument, 198
When he shall not recover costs, 255

PLAINTIFF.
When his title terminates pending suit, 256
What must allege in partition suit, 265
To file lis pendens, 27, 267
Rights of absent, may be tried, 271
To make lien-holders parties in partition suits, 273
To notify lien holders, 274
To make affidavits in proceedings against joint defendant, 348
Of offer to compromise, 368
When to recover costs, 470
Costs allowed to in only one action, where several actions brought on one instrument, 471
Not to have costs when he recovers less than fifty dollars,
To pay costs after tender, 478
To give security for costs in certain cases, 482
How papers served on, 491
Non-resident, service may be on the clerk, 495

PLEADING.
Quesion of fact not in issue in, how tried, 3
Time in which defendant may file, 25
What are, 36
Form and sufficiency of, 37
What allowed, 38
To be filed, 38
On whom served, 38
By whom subscribed, 51
By whom verified and form of verification, 55
Items of account need not be set forth in, 56
When need not be verified, 52
Irrelevant or redundant matter to be stricken from, 57
How judgment recited in, 61
In actions for libel or slander, 62, 63
What causes of action may be united in, 64
What are material allegations in, 66
When may be amended, 67, 69
How construed, 70
Errors in, not affecting substantial rights shall be disregarded, 71
Of parties refusing to testify, may be stricken out, 398
See Complaint, Demurrer, Answer.

POINTS.
On appeal to be furnished judges or filed with clerk, 341

PRIEST.
When shall not be a witness, 375

PRISONER.
How may be produced for examination as a witness, 390

PRIVATE.
Rights, how enforced and protected, 1
Wrongs, how redressed or prevented, 1

PROCEEDINGS.
Irregularity of, ground for a new trial, 193
Supplementary to execution, 235, 245
See Execution.

PROMISSORY NOTES.
Not subject to set-off if assigned before due, 5
Action by assignee of, 5
Persons severally liable on to be joined or not at option of plaintiff, 15

PROOF.
What is, of service of summons and how made, 28, 33
Affidavit, admission and certificate are, 33
What certificate and affidavit shall state, 34

PROPERTY.
Personal, several causes of action to recover may be united, 64
Several causes of action for damages for withholding may be united, 64
Defendant may be arrested in an action to recover for concealing, 73
Plaintiff may claim delivery of, 99
Other proceedings in action for delivery of, 100, 111
What may be attached, 124
How attached, 125
Claim of by third persons, 109, 131, 218
Inventory of, in attachment, 129
Perishable, how sold, 130
How execution issued for levying on, 210
How execution levied on, 217
What is exempt from execution, 219
Judgment may be for possession of, 200
Sale of, under execution, 221
How sold, 223
Perishable, to be sold, 130, 221

1868 4th Regular.pdf

PROPERTY.
Married women may bring action for separate alone, 7
Real, actions for recovery of, where tried, 18
Notice of lispendens to be filed in actions affecting title to, 27, 267
How described in actions to recover, 58
Several actions to recover specific may be united, 64
What other actions affecting may be united, 64
How attached, 125
Notice of sale of on execution, 221
How sold, 223
Certificate of sale of, what to contain, 229
How and by whom redeemed, 231
What is a nuisance to, 249
Waste on, ground of action, 250
Trespass on, ground of action, 251
Damages for forcible entry upon title to, not subject to arbitration, 358
Actions on conflicting claims to, 254, 263
By whom brought and against whom, 254
When plaintiff shall not recover costs in, 255
How verdict and judgment shall be when plaintiff's right to recover has terminated during the pendency of the action, 256
When value of improvements on may be set-off against damages, 257
Court may order survey, 258
Plaintiff liable for injury to, by surveyors, 259
Mortgage of not a conveyance, 260
Mortgage of must be foreclosed, 246, 248
Court may restrain injury to during foreclosure, 261
Damages may be recovered for injury to, 262
Alienation not to prejudice action to recover, 263
Action for partition of, 264, 309
By whom and against whom brought, 264
What complaint to contain in, 265
Why not to be made parties in, 266
Plaintiff to file notice of lis pendens in, 267
To whom summons directed in, 268
How summons served on non-resident in, 269
What answers in, to contain, 270
Rights of several parties may be tried and determined in, 271
Court may order lien holders brought into, 273
Trial of lien holders' rights, 274
Sale may be ordered in, when partition cannot be made, 275
How referee's to make partition of, 276
Referees to make report on partition of, 277
Court may set aside or confirm report of referees on partition, 278
Judgment on partition of, 278
Whom judgment shall affect, 278, 279
Expenses of partition, how paid, 280
How lien on an undivided interest affected by partition, 281
How an estate for life or years in affected by partition, 282
How proceeds in applied after sale of, 283
When securities to be preferred, 284
Distribution of proceeds of sale of, in partition, 285, 286
All sales of, in partition, to be at public auction, 287
Notice of sales of to be given, 287
Credit to be allowed in certain cases, 288
Referee may take mortgage on for property sold on credit, 289
Tenant for life or years to receive a sum of money as a satisfaction, 290
Court may order sum paid to tenant for life or years, 291
Court to protect interest of unknown tenant, 292
Court to protect vested or future contingent interest, 293
Terms of sale to be made known at the time of sale, 294
Referees not to be interested in purchase of, 295
Purchase by referee to be void, 295
Guardian to purchase, if at all, for infant's benefit, 295
Referee to report as to sale of, 296
Referee to execute conveyances, 297
Party entitled to share in partition may purchase at sale, 298
Conveyance to be recorded, 299
Proceeds belonging to unknown owners to be invested, 300
In whose name securities to be taken, 301, 302
Clerk and successors to receive interest and principal and reinvest, 303
Court may order compensation between parties in certain cases, 304
Guardian to receive proceeds when share of infant sold, 305
Also when share of insane person sold, 305
Guardian may consent to a partition without action, 307
Court on consent of parties may appoint one referee instead of three in partition, 309
PUBLICATION.
Service of summons may be made in certain cases, 30, 269
Proof of service of summons by, how made, 33
Notice of examination to perpetuate testimony to be given by in certain cases, 438

HeinOnline -- 1867 36 1867

PUBLIC OFFICER.
Action against, when brought, 19
Action against, where tried, 19
PURCHASER.
Delinquent, under execution, 224, 225
Personal property to be delivered to, 227
Payment to be made to in certain cases, 233
To receive rents of property sold under execution, 236
If evicted from property purchased, to revive judgment, 237
May recover damages from tenant, 262
Who not to be, 295

Q

QUESTIONS.
Of fact not in issue by pleadings, how tried, 3
On examination of witness, 409
QUO WARRANTO.
Writ of, 310, 316
See Usurpation.

R

REAL PROPERTY.
Action for recovery of, where tried, 18
Action for partition of, where tried, 18
Action for injuries to, where tried, 18
Action for foreclosure of, mortgage on, when tried, 18
Action affecting title to, what is notice of, 27
How to be attached when not in defendant's name, 125
How to be attached when standing in defendant's name, 125
REAL PARTY.
In interest to prosecute action, 4
REBUTTAL.
Of testimony of party, 397
RECEIPT
Of sheriff will discharge garnishee, 130
RECEIVER.
When and how may be appointed, 143
In what cases may be appointed, 143
RECORD.
Of the judgment to be lien on property of judgment debtor, 207
Of pendency of action to be notice, 27, 267
RECORDS.
Miscellaneous provisions as to, 421, 429
To be evidence, 422
How proved, 424
Evidence of judicial, 424, 427
Of foreign country, how proved, 426
REDEMPTION.
When property subject to, fact to be stated in certificate of sale, 229
How may be effected, 230, 231
From redemptioner, 232
Payment on, 233
What papers necessary to effect a, 234
REDEMPTIONERS.
Who shall be, 230
Entitled to rents, 236
REDUNDANCE.
May be stricken from pleadings, 57
REFEREE.
To examine third persons in whose hands property attached, 128
May assess damages on default by order of court, 150
May try issues of law or fact, 154, 155, 181, 182
May be appointed to examine long account, 183
To be residents of the county, 184
What objections may be taken to appointment of, 185, 186
Report of, when to be filed, 183
Report of, may be excepted to and reviewed, 187
Report of, to have effect of special verdict in certain cases, 187
When report of deemed excepted to, 191
Judgment debtor to appear before, when and for what purpose, 238, 239
To take proofs as to outstanding heirs, 274
May be appointed to sell property, 276
May be appointed to divide property, 276
To report to the court, 274, 277

REFEREE.
May take securities, 289
Not to purchase property sold under partition, 295
Sales by, to be at public auction, 287
Party entitled to share in partition, may purchase and give receipts, 298
May pay proceeds of sale to guardian, 305
One may be appointed by consent of parties, 309
Fees of, per day, 476
When there are three, all must meet but two may not, 500
REFERENCE.
May be ordered to take account after judgment, 181
When and how ordered, 182, 183
How may compose a, 184
REGISTER.
To be kept by clerk, 499
RELIEF.
Summons to recite demand for, 24
To be demanded in complaint, 39
REMITTITUR.
To be sent by clerk of supreme court to court where case tried, 342
RENTS.
Action to recover and profits of real property may be united with action to recover property, 54
To be paid to purchaser under execution, 236
REPLEVIN.
Actions in, 99, 110
Plaintiff may claim delivery of personal property, 99
Plaintiff to make affidavit, 100
Plaintiff to give undertaking, 102
Sheriff to approve undertaking, 102
How papers in, served, 102
Defendant may except to plaintiff's sureties on replevin bond, 103
Sureties to justify, 103
How sureties to justify, 105
Attorney to require sheriff to take property in, 101
Sheriff to take property in, 101, 107, 108
If property be concealed, how sheriff to take in, 107
Claim of property by third persons, 109
Sheriff to file proceedings, 110
Sheriff may demand indemnity bond, 109
Judgment in, 200
Qualification of sureties in, 106
Sheriff to keep property in, 108
REPORT.
Of referees where cause tried by them, 187
Of referees in partition suit, 274, 277
Of referee may be excepted to, 187
RESPONDENT.
In adverse party to appellant, 319
To file amendments to statement on appeal, 322
Failing to file amendments to be deemed an agreement to the statement, 323
To except sureties upon appeal bond after notice, 339
RETURN.
Of summons, how made, 28
Order of arrest to be returned, 77
How order of arrest returned, 86
Of replevin papers, 110
Of inventory of property attached to be made with writ, 129
Of writ of attachment, how made, 141
Of writ of certiorari, 438
Of writ of mandate, 446
Of execution when made, 212
REVIEW.
Writ of, and certiorari the same, 430
Writ of, how and when granted, 431
Application for writ of, how made, 432
To whom writ of directed, 433
Writ of, what to command, 434
Where stay of proceedings not asked, what writ to contain, 435
How served, 436
How far to extend under writ, 437
How return of writ of, may be amended, 438
Other proceedings under writ of, 439, 440
See Certiorari.
REVOCATION.
Of submission to arbitration, when and how made, 360
What damages to be recovered, when arbitration revoked, 367
RIGHTS.
One action for the enforcement or protection of private, 1
Court may disregard errors and defects, that do not affect substantial, 71

1868 4th Regular.pdf

S

SALE.
Of perishable property attached, 130
Of property attached to satisfy judgment, 132
On execution, to be upon notice, 221
Made without notice, make sheriff liable, 222
On execution, how made, 223
Certificate of, to be given, 227
Nature of certificate of, 228
Of real property in certain cases, subject to redemption, 229
On foreclosure, to be ordered, 246
On foreclosure, to cease when judgment satisfied, 248
Of property under partition, 271
How proceeds of to be applied, 283, 285, 286
By referee to be made, at auction, 287
May be on credit, 288
Terms of, should be made known at time of, 294
Referee not to be interested in, 295
To be reported to court, 296
To be confirmed by the court, 297
SATISFACTION.
Of judgment, when entered, 208
To be executed by judgment creditor, 208
Of judgment to be given by attorney, any time within one year, 208
May be entered by order of court, 208
SEAL.
To be attached to summons, 23
To be attached to writ of execution, 210
Impression of, how made, 439
SEARCHER OF RECORDS.
Affidavit of, 273
SECURITY.
May bring suit, 498
SEPARATE PROPERTY.
Of married women, action concerning parties to, 7
SET-OFF.
Promissory note and bill of exchange not subject to, when assigned before due, 5
definition of, 47
Verdict on, when pleaded, 176
Judgment to be given for excess of over plaintiffs demand, 199
SERVICE.
Of summons, how effected, 28
Of notices and papers, how effected, 491
By mail, of papers, etc., how effected, 492, 493
When to be made on attorney, 494, 495
SHAM.
Answers and defences may be sricken out, 50
SHARES.
Of stock may be attached, 124, 125
How attached, 125
To be attached on execution, 217
SHERIFF.
Where and for what cause may be sued, 19
Shall serve summons, 28
Deputy may serve process, 28
Required to arrest defendant, 77
How order of arrest executed by, 79
Defendant arrested may surrender himself to, 82
Bail may surrender defendant to, 83
To file order of arrest in court, 86
Liable if defendant escape, 95, 96
To approve undertaking in replevin, 102
To serve affidavit, notice and copy of undertaking on defendant in replevin, 102
To take property in replevin, 101, 107, 108
To be responsible for property in replevin till sureties justify, 105
May break inclosure to take property, 107
To keep property till fees are paid, 108
To file replevin papers in court, 110
To receive indemnity bond in replevin, 109
Attachments may issue to sheriffs of different counties, 123
How to execute attachment, 125
To serve papers on debtors of defendants, 126
To garnishee, 126
May sell perishable property, 130
To execute attachment without delay, 125
To take inventory of property, 129
To collect debts and credits, 130
How to sell property attached, 130
Jury of, in attachment, 131

HeinOnline -- 1867 39 1867

SHERIFF.
How to satisfy judgment in attachment, 132
To retain his fees out of the proceeds of sales, 133
To redeliver attached property to defendant when judgment paid, 133
When to deliver property attached to defendant, 135, 136
Shall return writ of attachment, 137
To summon jury, 159
To keep jury together, 166
To levy on execution, 210
To return execution, 212
Jury of, to try claims to property in execution, 218
How to execute writ of execution, 220
Shall give notice of sale under execution, 221
Penalty against, for not doing it, 222
Not to be a purchaser at execution sale, 223
Shall give receipts for debts collected belonging to judgment debtor, 240
To serve subpoena, 383
To serve warrant for contempt, 459
To receive bail, 460
To return writ and undertaking, 461
How to keep prisoner confined, 467
SLANDER.
Actions for, or libel, 62, 63
What complaint to contain, 62
Defendant may allege truth of defamatory matter in his answer, 63
Defendant may give in evidence mitigating circumstances, 63
STATEMENT.
On motion for new trial, 194
On appeal, what to contain, and on whom served, and when to be made, 322
What shall be deemed a waiver of, and what a settlement of, 323
When settled or agreed upon to be filed with clerk, 325
To be annexed to the judgment roll or order appealed from, 326
To be furnished by appellant to appellate court, 330
On confession of judgment to be sworn to, 354
STATUTES.
Private, how pleaded, 61
Evidence of of other states, 428
Of limitation, when cannot be pleaded, 349
STAY OF PROCEEDINGS.
May be granted after judgment, 197
May be granted on appeal, 333
Undertaking necessary to, 309, 334, 335, 336, 337, 340
On writ of review, 434
STOCK
How attached, 125
SUBMISSION.
Of controversy without action, 335
To arbitration, 358. See Controversy, Arbitration.
SUBPOENA.
May require the attendance of party with books, documents, etc., 380
What the object and purpose of, 381
How to be served, 382
How to be served when witness is concealed, 383
Witness to obey, 385
Disobedience to punished as a contempt, 387
Obeying exonerates from arrest, 393
SUBSCRIPTION.
Of pleadings to be by party or his attorney, 51
SUBSTITUTION.
Court may allow in certain cases, 16
SUIT.
Between husband and wife, 373, 375
She may sue alone when, 375
When husband and wife are sued together she may defend in her own right, 376
SUMMONS.
To issue after filing complaint, 22
How signed, 23
To whom directed, 23
To issue under seal, 23
What to require and what to contain, 24
To state relief demanded, 26
What notice shall contain, 26
How to be indorsed, 24
How waived, 22
How served, 29
Service of, by publication, when, 30
When publication of ordered, 31
Return of service of, 28
Copy of, when to be deposited in postoffice, 31
By whom served, 28

SUMMONS.
Order of arrest may accompany, 77
When issued in replevin, 99
Order of injunction may accompany, 113
In attachment, 141
In partition suit, 268
May require joint debtors to show cause why they will not be bound by judgment, 346
To describe judgment, 347
To be accompanied by affidavit, 348
Defendant to answer, 349
After service of, commission may issue, 403, 407
SUNDAY.
To be excluded when last day, 501
SUPPLEMENTARY PROCEEDINGS.
Against the judgment debtor, 238, 245
See Execution.
SUPREME COURT.
May review any intermediate order on appeal, 328
May reverse or modify judgment or remand cause, 329
How appeals brought to a hearing in, 341
Appeals to, from district court, 331, 342
Judge of may order prisoner to be examined as witness, 390
Clerk of to send down remittitur, 342
Appeal to from judgment, 440
SUPREME COURT CLERK
To copy points and authorities of parties appealing, 341
To certify judgment on appeal and send remittitur, 342
SURETIES.
On same or separate instrument may all be joined in one action, 75
On arrest, affidavit of, 76
May be given and defendant be discharged from arrest, 81
May surrender defendant, 82
May arrest or cause defendant to be arrested, 83
Justification of on release of defendant from arrest, 87
Qualification of, on arrest, 88
May be examined as to property, 89
To execute replevin undertaking, 102
Must justify, 103
On undertaking to release property replevied, 105
Qualifications of, 137
Justification of, 137
On undertaking on appeal, 332, 334, 336, 339, 340
On release on bond for contempt, 460
On undertaking for costs, 483
Qualifications of, 484
May compel party for whom they are bound to pay debt, 498
SURGEON.
Not to be a witness in certain cases, 376
SURPLUS MONEY.
On foreclosure to be paid to defendant, 247
SURPRISE.
Court may relieve a party from a judgment taken through, 68
Which ordinary prudence could not guard against, ground for new trial, 193
SURVEY.
Court may allow, where claims to property are conflicting, 258, 259
Of land in partition may be made, 276

T

TENANTS.
Joint, in common, etc., may bring action for partition, 264
For less than ten years not to be affected by partition, 280
Whose estate has been sold to receive compensation, 290
Unknown, to be protected by court, 292
See property, Real; Partition of Real Property.
TENDER.
Of money on redemption, 233
Of money before suit brought, 478
TERRITORY.
When action tried when defendants are non-residents of the, 20
Service of summons to be made by publication on non-residents of the, 20
How pleadings verified, when a party, 55
Defendant departing from with intention to defraud creditors may be arrested, 73
Attachments may be issued on contracts made or payable in, 120
How affidavits taken in, 399
How affidavits taken in an other, 400
How affidavits taken in a foreign, 401
How deposition of witness taken in, 403
Cause of action arising in another, 404
How action may be maintained on, 503

TESTIMONY.
Of a witness may be taken by deposition, when, 403
How taken by deposition, 404, 406
Of witness out of the territory, when may be taken, 407
Commission to issue to take, 408
How commission executed, 409, 411
Of a witness may be perpetuated, 412
Proceedings to perpetuate, 412, 417
See Witness.
THINGS IN ACTION.
Assignor of in certain cases not to be a witness for assignee, 4
Action by assignee of not to prejudice existing set-off, 5
THIRD PERSONS.
Claim of, in replevin, 109
Claim of, in attachment, 131
Claim of on execution, 218
TIME.
In which defendant may answer, 25
Answer may be made by order of court, after, limited by act, 68
To file statement on motion for a new trial, 195
In which an appeal may be taken, 320
To file statement on an appeal, 322
To file an undertaking on appeal, 332
May be enlarged for preparing statement on appeal, 324
To except to sureties on appeal undertaking, 339
Of notice for a deposition, 404
Of application for mandamus, 446
For arbitration to be fixed, 361
Of service by mail, 493
Computation of in this act, 501
TOOLS.
Exempt from execution, 219
TRANSCRIPT.
Of judgment filed in other county to be a lien, 207
TRANSFER.
Of place of trial when made, 21
TRESPASS.
Actions for, 251
TREES.
Trespass in cutting, 251
TRIAL.
Of action where, 18, 21
Of issue of facts not in pleadings, 3
When juror sick, how to proceed, 164
Of action upon disagreement of jury, 169
By jury may be waived, when exceptions at, 188, 191
Of issue on mandamus, 447
See New Trial; Place of Trial; Exceptions.
TRUSTEE.
Of an express trust, who is, 6
May sue by himself, 6
Claims against, may be joined, 64
Court may order money held by, to be deposited in court, 142
Appeal, undertaking in action by, 337
When to pay costs, 479

U

UNDERTAKING.
Effect of, on arrest, 76
Justification of sureties on, 76
Shall be filed with the clerk of the court, 76
On discharge from arrest, 81
Disposition of, on arrest, 86
Deposit to be returned on filing an, 93
On claims and delivery of personal property, 102
Defendant may claim redelivery of property on filing, 104
Sureties on, to justify, 105
Qualifications of sureties on, 105
Of indemnity in replevin to sheriff, 109
On attachment, effect of, 122
To release attachment, 123, 137
May be prosecuted, 134
Of indemnity on execution to a sheriff, 218
On injunction, effect of, 115
On release of judgment debtor, 239
On appeal to the supreme court, 332, 340
On appeal from judgment ordering delivery of personal property, 336
May be in one of several instruments, 338
To stay proceedings, how it must be, 333
To stay proceedings when judgment is for delivery or assignment, 334
To stay proceedings when judgment directs execution of a conveyance, 333
On appeal from judgment ordering delivery of personal property, 336
What shall be effect of, 339

1868 4th Regular.pdf

UNDERTAKING.
On discharge from arrest for contempt, 460
For costs by non-resident, 483
UNLIQUIDATED DEMAND.
Witness on assignment of, 4
Action by assignee of, 4
UNKNOWN.
When defendant's name is, 69
When persons interested in real property are, 265
Proceeds of sale of property belonging to, 300
USURPATION.
Of office or franchise, 310, 316

V

VENIRE. See Jurors; Jury.
VENUE. See Place of Trial.
VERDICT.
Wha may be done in case of sickness of juror before, 164
Conduct of jury before reading, 160
Jury may bring in sealed, 170
When jury have agreed upon, 171
May be corrected, 172
Shall be read to jury, 173
May be either general or special, 174
What is a general or special, 174
General shall control special, 175
To establish amount, 176
To find value of property and damages, 177
What to be when plaintiff's right to real property is terminated, 256
Against joint debtors to be for surplus, 351
VERIFICATION.
Of pleadings, when and how made, 51, 55
Of answer, may be omitted when, 52
Form of or substance of, 55
Form of, on injunction, 113
Of statement on confession of judgment, 353
Of memorandum of costs, 481
VOLUNTARY APPEARANCE.
Gives court jurisdiction, 35
Is equivalent to personal service, 35

W

WAGES.
When not to be applied to the satisfaction of judgment, 243
WAIVER.
Of summons, what is, 22
WARD. See Infant, Guardian.
WARRANT.
May issue against disobeying witness, 389
May issue for a contempt, 457
How executed, 459
WASTE.
Actions for, 249, 253
To prevent after sale on execution, 235
To prevent on appeal, 336
WIFE. See Married Women; Suit—7.
WITNESS.
When assignor shall not be, 4
On assignment of thing in action, etc., 4
Convenience of, ground for changing place of trial, 21
May be examined on challenge to jurors, 163
May be examined on challenge to referees, 186
In proceedings supplementary to execution, 242
May be examined on arbitration, 361
Before sheriff's jury on claim of third person to property levied on in execution, 21
In general who may be, 369, 429
All persons, with certain exceptions may be, 369
Who shall not be, 360
What interest renders a person incompetent to be, 371
Husband not to be for or against wife, 373
Wife not to be for or against husband, 373
When attorney and counselor cannot be, 374
When clergyman or priest cannot be, 375
When licensed physician or surgeon cannot be, 376
When public officer shall not be, 377
Judge or juror may be, 378

HeinOnline -- 1867 43 1867

1868 4th Regular.pdf

WITNESSES.
Not understanding English may be examined by interpreter, 379
Manner of compelling attendance of, and their rights and duties, 380, 394
Subpoena may require books, etc., to be brought by, 380
Cannot be compelled to attend out of his county more than thirty miles, 380
What subpoena to require of, 381
How subpoena served on, 383
How subpoena served on, concealed, 384
Duty of, to obey subpoena, 385
To answer legal and pertinent questions, 386
May be required to answer as to previous conviction, 386
Disobedience to subpoena, 387
How disobedience of punished, 388
Liable for damages, 388
Failure of, to attend court may issue warrant, 389
In jail or prison, may be examined by deposition, 390
May be produced in certain cases, 292
To be exonerated from arrest, 393
Liability of officer arresting, 394
Examination of parties to an action, 395, 397, 398
To obtain a discovery allowed, 395
Party to action may be examined as a, at instance of adverse party, 396
Testimony of adverse party may be rebutted, 397
If adverse party refuse to testify as, his pleadings may be stricken out, 398
Testimony by deposition in this territory, 403, 406
When testimony of may be taken by deposition, 403
Proceedings to have deposition of taken, 404
How deposition of to be taken, 405
Deposition of, to be read after death of, 405
Deposition of, once taken can always be read, 406
Testimony of, out of the territory, 407-411
When deposition of may be taken, 407
Testimony of to be taken upon commission, 408
Deposition of how taken, 409
Examined upon commission, to be sworn, etc., 409
Deposition of, to be sealed and returned, 410
Proceedings to perpetuate testimony of, 412–417
Testimony of may be perpetuated, 412
How application made, 413
How deposition taken, 414
Examination of, how conducted, 415
Deposition of taken under this chapter, when to be ready, 417
How sworn, 418–420
Form of oath to be administered to, 420

WOMAN.
How to sue and be sued, 7
Married, when may sue alone, 7

WOOD.
Trespass in cutting, 251

WRITINGS.
Miscellaneous provisions as to record, and 421–429
Cases in which secondary evidence of the contents of, may be given, 422. See Records.

WRONGS.
But one action for the redress or prevention of private, 1

HeinOnline -- 1867 44 1867

1868 4th Regular.pdf

MEMORIALS AND RESOLUTIONS

Joint memorial to Congress, asking for State government for Montana 267
Joint memorial to Congress, asking an appropriation for Montana militia 268
Joint memorial to Congress, asking for treaty, etc., with Blackfeet Indians 268
Joint memorial to Congress, asking for the establishment of a branch mint in Montana Territory 269
Joint memorial to Congress, asking for the establishment of certain postal routes in Montana 270
Joint memorial to Congress, asking for appropriation to remove obstruction in Missouri river 271
Joint memorial to Congress, asking for appropriation to remove obstruction in Missouri river above the American Falls 272
Joint resolution relative to setting apart eastern Montana for Indian reservation 273
Joint resolution authorizing auditor to pay for arsenal and magazine 273
Joint resolution relative to the distribution of the laws and journals, 274
Joint resolution directing auditor to pay A. G. Prosser 274
Joint resolution authorizing auditor to issue warrants in favor of J. J. Roe & Co. 275
Joint resolution authorizing auditor to issue warrants in favor of William Deasey 275
Joint resolution authorizing auditor to issue warrants in favor of H. J. Johnson 276
Joint resolution authorizing auditor to draw warrants in favor of Jas. B. Powell 276
Joint resolution authorizing auditor to draw warrants in favor of J. J. Roe & Co. 276
Joint resolution authorizing auditor to draw certain warrants 277
Joint resolution authorizing auditor to audit claims of S. W. Hurst and others 277
Joint resolution authorizing auditor to issue certain warrants 278

1868 4th Regular.pdf

HeinOnline -- 1867 [ii] 1867

1868 4th Regular.pdf

ERRATA.

Page 26, Sec. 5, line 1, read "concerns" for "concern."
Page 31, Sec. 26, line 18, read "sued for."
Page 54, Sec. 10, line 2, strike out "It," [in brackets.]
Page 59, title should read "payment of."
Page 56, Sec. 8, line 18, strike out "the."
Page 60, approved "November 19" in lieu of "9."
Page 61, Sec. 2, insert the words "and authority" after the word "power."
Page 61, Sec. 4, last line, insert the words "be and" after word "shall."
Page 61, Sec. 6, insert "first" after last word of line 7.
Page 76, line 2, read "well" for "will."
Page 76, Sec. 5, line 3, read "or" instead of "and."
Page 90, Sec. 2, line 1, insert word "act" after word "this."
Page 104, Sec. 4, line 1, insert word "act" after word "this."
Page 234, first side note, read "Nov. 22" in lieu of "27."
Page 222, number of syllabus should commence "430" and end "440."
Page 214, syllabus "399, 400 and 401" agree with enrolled bill, but are obviously surplusage.